

Verbatim Transcript of Monthly Council Meeting

Washington State Energy Facility Site Evaluation Council

November 13, 2018



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WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
Olympia, Washington
Tuesday, November 13, 2018
1:30 p.m.

MONTHLY COUNCIL MEETING
Verbatim Transcript of Proceedings

REPORTED BY: SHERRILYN SMITH, CCR# 2097

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A P P E A R A N C E S

Councilmembers:

KATHLEEN DREW, Chair
LIZ GREEN-TAYLOR, Department of Commerce
CULLEN STEPHENSON, Department of Ecology
MIKE LIVINGSTON, Fish & Wildlife
DAN SIEMANN, Natural Resources (via phone)

Assistant Attorney General:

ANN C. ESSKO
JON THOMPSON

Council Staff:

SONIA BUMPUS
TAMMY MASTRO
AMI KIDDER
AMY MOON
PATTY BETTS
CHRISTINA POTIS
JOAN AITKEN
STEWART HENDERSON

In Attendance:

BILL SHERMAN, Counsel for the Environment (via phone)
CHRIS SHERIN, Grays Harbor Energy
MARK MILLER, Chehalis Generating Station
JASON SPADARO, Whistling Ridge Energy Project
TIM McMAHAN, Whistling Ridge Energy Project

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1 CHAIR DREW: Good afternoon. This is
2 Kathleen Drew, Chair of the Energy Facility Site
3 Evaluation Council, and I am calling this meeting for
4 November, I am calling this meeting to order.

5 Can we have the roll call, please.

6 MS. MASTRO: Department of Commerce?

7 MS. GREEN-TAYLOR: Liz Green-Taylor,
8 here.

9 MS. MASTRO: Department of Ecology?

10 MR. STEPHENSON: Cullen Stephenson,
11 here.

12 MS. MASTRO: Fish and Wildlife?

13 MR. LIVINGSTON: Mike Livingston, here.

14 MS. MASTRO: Department of Natural
15 Resources?

16 Chair, there is a quorum for the EFSEC
17 Council.

18 CHAIR DREW: Okay. Thank you.

19 I will ask anyone who is on the phone to
20 introduce themselves if they so wish.

21 MR. SHERMAN: Bill Sherman, Counsel for
22 the Environment.

23 CHAIR DREW: Okay.

24 Before we have our proposed agenda before us,
25 is there a motion to adopt the agenda?

1 MR. STEPHENSON: I'll so move.

2 MR. LIVINGSTON: I'll second that.

3 CHAIR DREW: All those in favor?

4 COUNCILMEMBERS: Aye.

5 CHAIR DREW: All those opposed?

6 The agenda is adopted.

7 Now, looking to the -- there's a feedback. If
8 those who are on the line could mute your phones
9 because I am getting feedback, that would be great.

10 Okay. Moving on to the meeting minutes from
11 October 16th. Is there a motion to adopt those?

12 MR. STEPHENSON: I have just a couple of
13 quick --

14 CHAIR DREW: Okay. So --

15 MR. STEPHENSON: -- amendments, Chair.

16 CHAIR DREW: So if we put it before us
17 then, move the adoption of the minutes, and then we
18 will correct them.

19 MR. STEPHENSON: Thank you.

20 I move that we adopt the minutes.

21 CHAIR DREW: Second?

22 MR. LIVINGSTON: I will second that.

23 CHAIR DREW: Thank you.

24 Go ahead.

25 MR. STEPHENSON: On Pages 13 and 14 of

1 the minutes there are four references to Yakima.
2 These are all tribal references and so they should be
3 spelled with an extra A instead of the I. I will get
4 these to Joan to make those changes.

5 CHAIR DREW: Okay. Then as -- actually,
6 I did this wrong, so we will take a step and say --

7 MR. STEPHENSON: I will move to adopt
8 the minutes --

9 CHAIR DREW: Minutes as amended.

10 MR. STEPHENSON: -- as amended.

11 CHAIR DREW: Thank you.

12 MR. LIVINGSTON: I'll second that move.

13 CHAIR DREW: All those in favor.

14 COUNCILMEMBERS: Aye.

15 CHAIR DREW: Opposed?

16 MR. SIEMANN: Aye.

17 CHAIR DREW: Is that Mr. Siemann on the
18 phone now from DNR?

19 MR. SIEMANN: Yes, that is.

20 CHAIR DREW: Okay.

21 MR. SIEMANN: This is Dan Siemann from
22 DNR.

23 CHAIR DREW: Thank you.

24 All those opposed? Motion carries.

25 Moving on to our project updates. Kittitas

1 Valley Wind Project. Eric?

2 Okay. While looking at the report for October
3 in your packets, we see that there are no out of the
4 ordinary issues at this time.

5 Wild Horse Wind Power Project. Ms. Diaz?

6 MS. GREEN-TAYLOR: They are all muted.

7 CHAIR DREW: Well, I think they would
8 speak up if they were there.

9 So as you can see in the report there, there
10 is nothing out of the ordinary to report. They do
11 have a hunting plan and started that on October 27th,
12 with the elk season, and had a stormwater inspection.

13 So moving on to Grays Harbor Energy Center.

14 MR. SHERIN: So where would you like me
15 to speak from?

16 CHAIR DREW: We need a microphone.

17 MS. GREEN-TAYLOR: The microphones will
18 pick --

19 CHAIR DREW: The microphones will pick
20 it up. Okay.

21 Go ahead, you could sit right there.

22 MR. SHERIN: I'll stand.

23 CHAIR DREW: That's fine, too.

24 MR. SHERIN: Perfect.

25 Good afternoon, Chair Drew, Councilmembers,

1 Chris Sherin, the plant manager, Grays Harbor Energy
2 Center.

3 I have no nonroutine items to report. I would
4 mention the gas line explosion in British Columbia
5 last month, but it was covered in last month's
6 meeting, so --

7 CHAIR DREW: Okay.

8 MR. SHERIN: -- I'll skip that.

9 CHAIR DREW: Okay.

10 MR. SHERIN: Any questions?

11 CHAIR DREW: Any questions?

12 Thank you.

13 MR. SHERIN: Thank you.

14 CHAIR DREW: Moving on to Columbia
15 Generating Station. Mary Ramos?

16 MS. MOON: Since Mary is not on the
17 line, there must be a technical difficulty today. But
18 there was nothing -- this is Amy Moon reporting.
19 There was nothing nonroutine to report for the period.

20 CHAIR DREW: Okay.

21 And the same is true for WNP 1/4?

22 MS. MOON: Oh, yes. Thank you,
23 Kathleen. Yes, the same is true for WNP 1/4.

24 CHAIR DREW: Okay. Thank you.

25 Moving on to Chehalis Generation Facility.

1 MR. MILLER: I'll sit down.

2 CHAIR DREW: Okay. You may.

3 MR. MILLER: This is very intimate
4 today.

5 CHAIR DREW: Not our usual room.

6 MR. MILLER: Yeah.

7 Good afternoon, Chair Drew, Councilmembers,
8 and Staff. I'm Mark Miller, the plant manager of the
9 Chehalis Generation Facility.

10 This month -- well, I reported verbally last
11 month. In this month's report, a brief summary of gas
12 supply issues that Mr. Sherin referred to, that we
13 experienced during the month of October.

14 While the curtailment of the natural gas to
15 the Chehalis plant has been relieved by reopening of
16 the Sumas hub, transport to the Pacific Northwest, the
17 line is only operating to 80 percent of its normal
18 pressure. The gas prices have been extraordinarily
19 high.

20 Just for information, maybe some of you follow
21 this or not, but typically the gas prices are around
22 \$3.75, \$4 million BTU, and today's pricing it was
23 around \$10 -- million BTU, so it's extraordinarily
24 high. So this put electric pricing in the day-ahead
25 market in the mid-Columbia trading hub of around 50 to

1 \$70 per megawatt hour. Our cost -- of these prices is
2 substantially higher than that, about \$88 an hour, so,
3 therefore, we have been curtailed due to economics.
4 It sounds like that may continue for a while.

5 I don't have any additional information on the
6 pipeline issues that they are having in
7 British Columbia. Most of that is available on the
8 Internet.

9 That's all I have to report, so if there are
10 any questions.

11 CHAIR DREW: Any questions?

12 MS. GREEN-TAYLOR: Just confirming, is
13 the price increase directly related to the explosion
14 or is it larger --

15 MR. MILLER: I can only --

16 MS. GREEN-TAYLOR: -- economic issues?

17 MR. MILLER: No, it's all related to
18 fuel.

19 MS. GREEN-TAYLOR: Okay.

20 MR. MILLER: So it's availability of the
21 fuel supply to the plant. And -- and that's -- and
22 those prices -- again, with the gas trading market,
23 which I'm not a gas trading expert, but one would
24 surmise that their capacity hasn't been fully restored
25 and difficulties in meeting transportation needs

1 results in high prices.

2 CHAIR DREW: I also see in your report
3 that you are making sure that you are able safely to
4 operate at the reduced pressure.

5 MR. MILLER: The pressure provided to us
6 is still at the same necessary pressure to operate the
7 plant safely. The rules of physics don't allow the
8 reduced pressure and the volume transport -- Cullen is
9 a chemical engineer, he knows this -- that they aren't
10 able to move as much gas at these pressures.

11 While we are still regulated, I think it's
12 about 895 pounds, something like that, to safe
13 combustion. The transport issues in -- in the 36-inch
14 line are not.

15 CHAIR DREW: Okay. Thank you for your
16 further clarification on that.

17 MR. STEPHENSON: Just one follow-up.
18 I'm -- you can tell from my portfolio that I'm not a
19 great economist, but it seems like with the natural
20 gas being down, demand for your energy would be up,
21 but you can't make it, is that right, because you
22 don't have the natural gas to do what you want to do?

23 MR. MILLER: Exactly. We do not have
24 the gas supply to be able to generate, so other
25 resources need to come into play in a much greater

1 way. Those prices -- if -- if generation is made
2 unavailable, then those have to be -- those megawatts
3 have to be replaced by other alternate sources. So if
4 we had a failure somewhere in our system where we were
5 unable to generate or transport energy in, they would
6 start us likely at a loss.

7 I don't know if that answers the -- your
8 question, Mr. Stephenson.

9 MR. STEPHENSON: Uh-huh.

10 MR. SHERIN: I would add that, pretty
11 much what Mark said, it's just economics. The price
12 of the gas is high because there's demand for what gas
13 is there. It's just put us out of the -- put us out
14 of the marketable range. We're not profitable.

15 MR. MILLER: And when Enbridge first had
16 the issue, Williams declared a force majeure event so
17 they could maintain reliable supplies to heating
18 customers primarily. It's a balancing act.

19 CHAIR DREW: Thank you.

20 Any other questions?

21 MR. MILLER: All right. Thank you.

22 CHAIR DREW: Thank you.

23 We are now at the Columbia Solar Project
24 update. Ms. Kidder.

25 MS. KIDDER: Good afternoon, Chair Drew

1 and Councilmembers. For the record, my name is Ami
2 Kidder, I have an update for you on the Columbia Solar
3 Project.

4 Columbia Solar has begun submissions of draft
5 plans that Staff are currently reviewing. Staff are
6 also coordinating with our contractors at various
7 agencies to review plans, as indicated MDNS and SCA.
8 Columbia Solar has also submitted their Joint Aquatic
9 Resource Permit Application, or JARPA, to the U.S.
10 Army Corps of Engineers. Staff are waiting for the
11 Corps' review and decision to determine which, if any,
12 permits are required for the type of site.

13 Are there any questions?

14 CHAIR DREW: Any questions?

15 Okay. Thank you.

16 Moving on to the Whistling Ridge Energy
17 Project. We have had Jason Spadaro with us, and --

18 MR. SPADARO: And Tim McMahan.

19 CHAIR DREW: -- Tim McMahan.

20 MR. SPADARO: Good afternoon, Chair Drew
21 and members of the Council. My name is Jason Spadaro,
22 I am president of Whistling Ridge Energy Project and
23 SDS Lumber Company.

24 We delivered a letter in -- this is a
25 five-year anniversary of the signing of the site

1 certification agreement, so by statute we are here to
2 provide an update after five years. We delivered a
3 letter that I believe is in your packet. I will read
4 parts of it.

5 Chair Drew and Councilmembers, I am President
6 of SDS Lumber and Whistling Ridge Energy, the owner of
7 the Whistling Ridge Energy Project, or "Project." I
8 am submitting a status report for the Whistling Ridge
9 Project, in accordance with RCW 463-68-060. Attached
10 to this report is a Project History timeline that
11 helps in understanding the status of this Project.

12 And then in response -- if you all have the
13 letter. If you don't, it's also in the packet that I
14 just passed around. Moving forward to the responses
15 that are in statute, the nature and degree of any
16 changes, project design, statements and information,
17 et cetera.

18 Our responses are at Section 1. At this time,
19 the Project is not proposing any changes as described
20 in Section 1 of the statute. There is no new
21 information or changed conditions known at this time
22 that might indicate the existence of any probable
23 significant adverse impacts not previously addressed
24 in the EFSEC FEIS.

25 And then, finally, at this time, Whistling

1 Ridge is not proposing any changes, modifications, or
2 amendments to the Site Certificate Agreement of any --
3 or any regulatory permits. It is possible that such
4 changes will be proposed in the future.

5 So Mr. Posner -- by the way, it is nice to see
6 some of you again. It's been a long time since I've
7 been here before the Council. A lot of new faces.
8 Nice to see you again. I know Steve Posner is still
9 here, and Tammy I recognize.

10 We are still alive, the project is still
11 alive. It has been mired down in litigation for a
12 number of years as the project history outline that
13 was attached to the letter described.

14 In this packet, I've just got some short
15 bullet updates, and I'll go through some attached
16 exhibits there and then open it up for questions.

17 So just in an overview, since there are so
18 many new faces, SDS Lumber is an integrated timberland
19 and lumber manufacturing company in Bingen,
20 Washington. We're down in the Columbia River Gorge
21 near White Salmon. Some of our forest land that we
22 own west of White Salmon is on a mountain called
23 Underwood Mountain, and to the west -- on the west
24 flanks of that is a ridgeline known as Whistling
25 Ridge. It extends from just a little north of

1 Underwood Mountain, farther to the north into DNR
2 ownership.

3 The portion that we permitted, sought permit
4 for was on our privately owned land. It's commercial
5 forest land. There's actually two owners, ourselves,
6 and then a sister company named Broughton Lumber
7 Company, so we have full site control of the property.
8 The Bonneville Power regional transmission lines
9 traverse right through the center of the property.
10 There's four sets of lines there: A 500, and two 230,
11 and one 115 kV line.

12 So it is on my first bullet point. It is west
13 of White Salmon on our private commercial forest land
14 owned by SDS and Broughton, adjacent to the Bonneville
15 regional transmission lines. Our application was
16 first filed here in 2009. The procedural history and
17 the background was all attached to the letter. Our
18 request was for up to 50 wind turbines. What was
19 approved by the site -- the EFSEC Council recommended
20 to the governor and then signed by the governor was
21 for up to 35 wind turbines. The project was reduced
22 in its size.

23 And then legal challenges have continued over
24 the years. Most recently, we just resolved the
25 Interconnection Agreement. It was appealed to the

1 Ninth Circuit Court of Appeals. A ruling was issued
2 earlier this year, and then a review requested, and
3 the review, en banc review was denied.

4 So that brings us up to -- that occurred,
5 what, June of this year, Tim?

6 MR. McMAHAN: July.

7 MR. SPADARO: July of this year.

8 By the way, I will introduce Tim McMahan,
9 project counsel and friend of the project.

10 So if you flip back in the package, just to
11 acquaint you, those new faces, there is a vicinity
12 map. In the upper left corner you can see we are down
13 on the border of the Washington/Oregon line on the
14 Columbia -- just north of the Columbia River. The
15 gray crosshatched area is the project boundaries. And
16 this is as amended by the final approval of EFSEC.
17 Part of the project had to be reduced.

18 The second page I put in just to give you a
19 reference for what was requested and then what was
20 approved. So the second page is from the EIS. It's
21 Figure 2.3-1. This was the original requested project
22 boundary and the turbine corridors where we requested
23 permission to erect turbines. Third page shows what
24 was approved. You can flip between the two and I have
25 shown and crosshatched the areas excluded from

1 construction by the final approval.

2 So there are -- a number of turbines on the
3 south edge bordering up against a National Scenic
4 boundary and with some visibility from within the
5 National Scenic Area boundary were removed from the
6 final approval. Turbines on the northeast corner also
7 visible from portions of the National Scenic Area,
8 those were removed. So that's the -- that is the --
9 up to 35 turbines within those corridors is what final
10 approval granted us.

11 You know, I don't know, I can answer questions
12 to the best of my ability. I didn't come prepared to
13 dig into the full review of the adjudicatory hearings
14 and the whole process of the EIS, but this is an
15 exhibit from the EIS showing some visual simulation
16 locations. One of -- one of these 54 viewpoints that
17 was analyzed I have attached. This is Point 13 on the
18 next page. This gives an example of what was
19 proposed, what the site looks like before, what it
20 was, as proposed initially, and then what was approved
21 as permitted. It's a visual simulation.

22 So that's some background on the project and a
23 status report. Having been tied up in litigation for
24 nearly ten years, there's not a lot that could have
25 been done with the project. Now that we are done with

1 litigation, hopefully, we can proceed to move forward
2 with the project, marketing and development, on a time
3 line now as market conditions allow.

4 That's my update. Are there any specific
5 questions?

6 CHAIR DREW: Thank you.

7 Councilmembers, do you have any questions?

8 MS. GREEN-TAYLOR: I do, ma'am.

9 CHAIR DREW: Ms. Green-Taylor.

10 MS. GREEN-TAYLOR: I apologize if you
11 said this and I just didn't hear it. Is there a
12 proposed date for construction to begin?

13 MR. SPADARO: No, not at this time.

14 MS. GREEN-TAYLOR: Okay.

15 MR. LIVINGSTON: Chair Drew?

16 CHAIR DREW: Mr. Livingston.

17 MR. LIVINGSTON: So based on your --
18 this Viewpoint 13, it looks like you removed the
19 towers that were going to be visible from the --
20 within the scenic -- I'm just curious, with the
21 National Scenic Area, other locations, particularly
22 like along the -- either the interstate or Highway 14,
23 if other turbines are viewable. I mean, how did --
24 how did you guys work through that whole process of
25 deciding which turbines got removed from the

1 originally proposed project?

2 MR. SPADARO: That was the Council's
3 decision in evaluating --

4 MR. LIVINGSTON: Okay.

5 MR. SPADARO: -- the need for renewable
6 energy and all of the other aspects of the project,
7 and then the environmental impacts of it. We didn't
8 voluntarily offer to remove turbines from the project.
9 The order was that those shall be -- from EFSEC, was
10 that shall be removed from the project.

11 The ones that you see in the visual
12 simulation, the ones that are visible in that -- in
13 that sim, were part of the southernmost string of the
14 project, and that was a simulation point along
15 Interstate 84. There are still some turbines that
16 will be visible from portions of the National Scenic
17 Area.

18 And that -- and this was -- and Tim, you know,
19 kick me if I am going astray here, but -- without, you
20 know, reopening the whole adjudicatory hearing
21 process.

22 The National Scenic Area Act does have some
23 savings provisions within it, that it has a boundary,
24 and things that are within the Scenic Area boundary
25 and outside of the Scenic Area boundary that can be

1 seen or heard from the Scenic -- within the boundary,
2 that there are savings provisions that protect those
3 uses, that the Scenic Area boundary has a line to it,
4 and it's not to -- by itself to create a -- impose
5 additional restrictions on land uses.

6 Now, under SEPA there are other obligations
7 and that's -- that was part of the evaluation that
8 this Council did in reviewing this project.

9 MR. LIVINGSTON: Okay. Thank you.

10 MR. SPADARO: Does that make sense?

11 MR. LIVINGSTON: Yes.

12 CHAIR DREW: Thank you.

13 Any other questions.

14 MR. McMAHAN: Just one thing. In my
15 poor legal drafting, it says RCW. That's a WAC. Jon
16 caught that already. Just to be clear about the
17 citations in the letter.

18 CHAIR DREW: Oh, okay. I see. In fact,
19 says RCW, and then it says WAC.

20 MR. McMAHAN: Yes, it does. It says
21 both, just in case.

22 CHAIR DREW: Okay. So noted.
23 Thank you.

24 MR. SPADARO: So I'll just close by
25 saying I look forward to coming back to you another

1 day, when we have a time line for actually moving
2 forward and moving on with the project.

3 CHAIR DREW: Okay.

4 MR. SPADARO: Thank you.

5 CHAIR DREW: Thank you very much. It's
6 good to see you.

7 We are now are moving on to Desert Claim
8 project update. We will start with Amy Moon.

9 Ms. Moon.

10 MS. MOON: Good afternoon, Chair Drew
11 and Councilmembers. As Chair Drew has stated, I am
12 Amy Moon and I am providing an update for the Desert
13 Claim project.

14 At the October council meeting, EFSEC Staff
15 discussed the public comments that were received in
16 response to the addendum to the final supplemental EIS
17 for the Desert Claim Wind Power request for amendment
18 to the Site Certification Agreement. As a result of
19 the public comments, EFSEC Staff revised the historic
20 and cultural preservation mitigation measures and
21 prepared the final addendum to the FSEIS, referred to
22 as the final SEPA addendum. None of the analysis done
23 for the final SEPA addendum resulted in findings of
24 significant unavoidable adverse impacts.

25 EFSEC Staff then prepared a draft amendment to

1 the Site Certification Agreement known as the SCA
2 Amendment No. 1. The draft SCA amendment includes
3 mitigation measures, presents it in the final SEPA
4 addendum. The cultural and archeological resource
5 section of the draft SCA amendment was updated to
6 clarify what will be considered during the development
7 of the cultural resources monitoring and mitigation
8 plan that will be prepared in coordination with the
9 Yakama Nation and the Department of Archaeology and
10 Historic Preservation, known as DAHP, or D-A-H-P.

11 EFSEC Staff also coordinated with the Yakama
12 Nation regarding historic and cultural preservation.
13 We discussed the draft SCA amendment and the historic
14 and cultural preservation concerns of the Yakama
15 Nation. EFSEC Staff evaluated these concerns and
16 determined they are identified in the commitments made
17 in the FSEIS and through mitigation measures in the
18 final SEPA addendum and the draft SCA amendment.

19 Does the Council have any questions on that?

20 CHAIR DREW: Questions?

21 Okay.

22 MS. MOON: So then I am going to turn it
23 over to Sonia Bumpus to discuss the amendment and
24 resolution.

25 MS. BUMPUS: Thank you.

1 So for the record, this is Sonia Bumpus. I am
2 going to be talking about the draft Resolution 343
3 that is in your Council packets. The SEPA staff
4 memorandum from Staff to Mr. Posner is also updated
5 and in the Council packets, as well as the Site
6 Certification Agreement, Amendment 1.

7 This version has all of the mitigation
8 measures from the SEPA addendum that Ms. Moon just
9 talked about incorporated. So it's not in track
10 changes like the one you saw last week, everything has
11 been incorporated. And there were a few minor typos
12 and things like that that we caught, that we went in
13 and changed. So these documents in your packet are
14 the most current versions.

15 So, as Ms. Moon already talked about, Staff
16 has been working to prepare the draft SCA amendment
17 over the last few weeks. As directed at the
18 October 16th council meeting, Staff has also prepared
19 this draft resolution in your packet, and we have sent
20 it to you for review.

21 I just want to talk about what the resolution
22 covers. It covers quite a bit. It starts off with a
23 high-level summary of the revised project, that's the
24 amended project, and it also provides a background
25 about the original project as it was proposed, and the

1 process that EFSEC went through at that time, back in
2 2009 to 2010.

3 It also outlines EFSEC's procedures for Desert
4 Claim's SCA amendment request. It includes the
5 April 11th, 2018 public hearing that EFSEC held in
6 Ellensburg, Washington, where we received comments
7 from the public, and Desert Claim provided a
8 presentation on their proposed amendments. It
9 describes EFSEC's SEPA environmental review. It goes
10 into quite a bit of detail about the public comments
11 that EFSEC received on these draft SEPA addendum in
12 September. It also discusses how we responded to
13 those comments and associated mitigation measures
14 after reviewing those comments. All of the mitigation
15 measures, just to note, they all stayed the same, with
16 the exception of the cultural resource mitigation
17 measure.

18 Finally, it discusses, the SCA amendment
19 requests consistency with the provisions outline in
20 WAC 463-66-040. This is consistency with the intent
21 of the original SCA. This is talked about on Page 13
22 of the resolution, applicable laws and rules. So this
23 actually is a pretty lengthy section. It covers the
24 consistency with the rules under SEPA, approval by
25 Council action, which is in 463-66-070. That's on

1 Page 16 through 17. It also talks about consistency
2 with construction and operations standards in EFSEC's
3 WAC 643-62. That's a pretty lengthy section there.
4 It also talks about consistency with provisions of
5 Chapter 463-72, which deals with EFSEC's site
6 restoration requirements.

7 All of those that I just listed, they all are
8 discussed in detail, and the resolution documents that
9 the amendment request -- and when I say "amendment
10 request" I mean Amendment 1 that you've got there in
11 your packets, is consistent with all of these.

12 I wanted to at this time check and see if
13 there are any questions from the Council about the
14 resolution or any of the SEPA documents.

15 CHAIR DREW: Are there any questions
16 from Councilmembers?

17 MR. LIVINGSTON: No.

18 MS. GREEN-TAYLOR: No.

19 CHAIR DREW: Okay.

20 MS. BUMPUS: So if there aren't any
21 questions, pursuant to WAC 463-66, Staff requests that
22 the Council take action on the SCA Amendment No. 1 for
23 the Desert Claim Wind Power Project, SCA Amendment
24 Request, and this would be to approve by Council
25 Resolution No. 343.

1 CHAIR DREW: Thank you.

2 At this point, I know we did have -- do have a
3 request that the Counsel for the Environment, Mr. Bill
4 Sherman, would like to address the Council, so I will
5 ask for that before we have a motion before us.

6 MR. SHERMAN: Thank you, Chair Drew.
7 Much appreciated.

8 This is Bill Sherman from the Washington State
9 Attorney General's Office, I'm appointed Counsel for
10 the Environment. For purposes of this project,
11 there's a little bit of history that relates to my
12 comment today. When this project was first before the
13 Council, the Counsel for the Environment, together
14 with Desert Claim, signed a stipulation on June 23rd,
15 2009, by which the Counsel for the Environment agreed
16 to fully support the issuance of the Site
17 Certification Agreement, subject to a number of
18 conditions set forth in the stipulation.

19 In my view, a deal is a deal on both sides.
20 The question for me was, are there aspects of the
21 project that have changed sufficiently to -- to bring
22 that stipulation into question or are there facts on
23 the ground that have changed sufficiently to put it
24 into question? The answer is no, given Desert Claim's
25 commitment in some small or marginal areas to conduct

1 additional monitoring.

2 So pursuant to the stipulation from 2009, and
3 in light of Desert Claim's commitment in the letter
4 that I forwarded to the Council today, the Counsel for
5 the Environment fully supports the issuance of the
6 amended Site Certification Agreement in this case.

7 CHAIR DREW: Thank you.

8 MR. SHERMAN: That's all I have to say.

9 CHAIR DREW: Are there questions from
10 Councilmembers?

11 MR. STEPHENSON: Just a comment.

12 CHAIR DREW: Okay. Comment,
13 Mr. Stephenson.

14 MR. STEPHENSON: Thanks, Chair Drew.

15 I just want to say, as I have looked through
16 this, it's clear that Staff and the SEPA manager have
17 looked at this hard. I am impressed by the work that
18 you have done and your responsiveness to the changes
19 and to the public comments, in my world, especially
20 around streams and wetlands and the cultural
21 resources, but it's -- it appears to me that this has
22 been well done in terms of responding to the changes.

23 MR. LIVINGSTON: I just have one comment
24 as well, Chair Drew.

25 CHAIR DREW: Mr. Livingston.

1 MR. LIVINGSTON: Because I wasn't on the
2 Council when this was passed, I had to review the
3 original SCA and get myself familiar with it, and
4 putting my Fish & Wildlife hat on, looking at
5 requirements such as additional bat monitoring when
6 the turbines go up, the Wind Power Guidelines at WDFW
7 would be used to develop the postconstruction avian
8 monitoring plan, as well as the -- the Best Management
9 Practices applied to removing afterbirth and carcasses
10 from livestock operations to avoid bald eagles being
11 attracted to the area, I think are all really still
12 pertinent measures for this project amendment, and so
13 I was happy to see that those are still in there, as
14 well as the additional steps for mitigation related to
15 streams and wetlands. I am very supportive of what
16 Staff has provided here for us to consider.

17 CHAIR DREW: Thank you.

18 I have a question for Counsel. So in order to
19 make sure that the stipulation for the Counsel for the
20 Environment, do we need to add that to -- if we are
21 going to propose a motion that would approve the
22 resolution and thereby the Site Certification
23 Agreement, would we add, then -- and the -- the
24 stipulation between the Counsel for the Environment,
25 or is that just assumed to be included?

1 MR. SHERMAN: Um --

2 CHAIR DREW: Mr. Sherman, go ahead.

3 MR. SHERMAN: I'm sorry, my -- as far as
4 I understand it, the original Site Certification
5 Agreement incorporated the original stipulation. To
6 the extent that that would be considered, you know,
7 part of the kind of foundation that you -- you would
8 be considering amending today, I guess it would be my
9 position that those -- those commitments in that
10 stipulation would remain in effect, but -- but --

11 CHAIR DREW: Okay.

12 MR. SHERMAN: -- I would be interested
13 in hearing if the Council believes something
14 different.

15 MS. BUMPUS: I was just going to note
16 for Council that the stipulation agreement between
17 Desert Claim and the CFE is Attachment 3. And so we
18 would -- that would stay there, that would remain as
19 Attachment 3. I think we have gone through and looked
20 to ensure that in -- in Amendment 1 of the SCA, that
21 all of the stipulations are covered in the SCA and
22 that are -- that there aren't any inconsistencies.

23 MS. MOON: Yeah, that --

24 MS. BUMPUS: Amy, do you want to --

25 MS. MOON: That's correct, Sonia. I

1 went through and made sure that all the stipulations
2 in this agreement remain in the SCA and they are all
3 very well covered.

4 MS. BUMPUS: Since they are part of the
5 original Site Certification Agreement and nothing has
6 changed, then what we would move to adopt today would
7 be the resolution in front of us, which would put into
8 effect the amended Site -- Amendment 1 to the Site
9 Certification Agreement.

10 MS. ESSKO: Yes. And if you wanted a
11 lot of clarity around the current status of the
12 stipulation, which Sonia says is attached as an
13 exhibit to the existing SCA, you could -- you have a
14 couple of choices. One, if the CFE -- if Bill Sherman
15 sent you a letter summarizing his agreement with the
16 project as modified and that it comports with the
17 original stipulation, then you could add that as
18 another attachment to the SCA. If you didn't want to
19 do that, then his agreement would be memorialized in
20 the transcript of today's meeting, and so long as you
21 kept that in your file with the SCA, that would
22 provide some history for you in the future.

23 I tend to favor the former approach, if you
24 have time and want to do that, because it's clearer.
25 Having his agreement in the transcript, you know, the

1 transcript could get separated, people aren't going to
2 know what's in there. It may be just cleaner just to
3 attach his letter, if he indeed wrote one, to the SCA.

4 MS. BUMPUS: Chair Drew, we received a
5 letter just before the council meeting from
6 Mr. Sherman.

7 CHAIR DREW: So just to make sure we
8 have this process correct, we will have a motion to
9 adopt the resolution which approves the Amendment 1,
10 and adding the letter from the Counsel for the
11 Environment as an attachment to Amendment 1.

12 MS. ESSKO: Yes.

13 CHAIR DREW: Have I got it?

14 MS. ESSKO: Yes.

15 CHAIR DREW: Okay.

16 MR. STEPHENSON: So hard to make that
17 motion when I haven't seen the letter. Is it in here?

18 MS. BUMPUS: Yes.

19 CHAIR DREW: It's not in our packets,
20 but it's right here. I can pass it to others.

21 MS. ESSKO: Cullen, could you just read
22 it into the record?

23 MR. STEPHENSON: Just this much?

24 MS. ESSKO: Yes. Just say who it is to
25 and from and date, and then read what he said.

1 MR. STEPHENSON: So this is addressed to
2 Kathleen Drew, Chair, to the Council, regarding Desert
3 Claim Wind Power, LLC, application for amended SCA.

4 I write in my capacity as Counsel for the
5 Environment on the Desert Claim Wind Power, LLC
6 project. On June 23, 2009, Counsel for the
7 Environment and Desert Claim signed a stipulation by
8 which my office agreed to, quote, fully support the
9 issuance of the [Site Certification Agreement] for the
10 project subject to the conditions set forth in the
11 stipulation, end quote.

12 Although the proposed project has changed in
13 certain ways from the original certified proposal, my
14 office stands by its agreement to fully support
15 issuance of an amended SCA, in light of that
16 stipulation and the commitments that Desert Claim Wind
17 Power, LLC made in the attached letter of
18 November 12th, 2018. For your convenience, I attach
19 the 2009 stipulation and 2018 letter as appendices.
20 Sincerely, William Sherman, Counsel for the
21 Environment.

22 CHAIR DREW: Thank you.

23 MR. STEPHENSON: Do you want a motion?

24 CHAIR DREW: Yes, please.

25 MR. STEPHENSON: Chair Drew, with that

1 clarification, I would move to endorse and adopt this
2 resolution, which is set forth as Amendment No. 1 to
3 Resolution No. 343, and thereby have the Council
4 approve the Desert Claim Site Certification Agreement
5 amendment request.

6 CHAIR DREW: So if I may, perhaps, have
7 a friendly amendment. We are going to adopt
8 resolution No. 343.

9 MR. STEPHENSON: Yes, that's correct.

10 CHAIR DREW: Okay.

11 And thereby approve -- the motion is to adopt
12 the resolution and thereby approve the Site
13 Certification Agreement.

14 MR. STEPHENSON: Yes.

15 CHAIR DREW: With the addition of the
16 letter from Mr. Sherman added to the -- as an
17 attachment.

18 Do we understand this?

19 MR. LIVINGSTON: Yes.

20 MS. GREEN-TAYLOR: Yes, ma'am.

21 CHAIR DREW: So we now have another
22 opportunity for comment since the motion is before us.

23 I would like to say that -- thank our Staff
24 for their thorough review and work on this proposed
25 amendment, as well as our certificate holder. I would

1 like to say that, as we see in the resolution, there
2 are no significant adverse impacts proposed by this
3 amendment, and, in fact, in many cases the impacts
4 will be less than the original agreement, and that
5 thereby it does not substantially change the Site
6 Certification Agreement and is appropriate for the
7 Council to pass this resolution.

8 Are there others who would wish to make any
9 additional comments?

10 Hearing none, I would ask Ms. Mastro to call
11 the roll.

12 MS. MASTRO: Do we have a second?

13 CHAIR DREW: Thank you.

14 MS. GREEN-TAYLOR: I will be happy to
15 second that motion.

16 CHAIR DREW: We have a second.

17 MS. MASTRO: Department of Commerce?
18 You are voting for the motion.

19 MS. GREEN-TAYLOR: I approve the motion.

20 MS. MASTRO: Department of Ecology?

21 MR. STEPHENSON: Aye.

22 MS. MASTRO: Department of Fish and
23 Wildlife.

24 MR. LIVINGSTON: Aye.

25 MS. MASTRO: Department of Natural

1 Resources.

2 MR. SIEMANN: Aye.

3 MS. MASTRO: Chair, do you have a vote?

4 CHAIR DREW: Aye.

5 The resolution is adopted.

6 Okay. Is there any other business to come

7 before the Council today?

8 Seeing none, this meeting is adjourned.

9 (Adjourned at 2:15 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Sherrilyn Smith, a Certified
Shorthand Reporter in and for the State of Washington,
do hereby certify that the foregoing transcript is
true and accurate to the best of my knowledge, skill
and ability.

SHERRILYN SMITH, CCR# 2097



Washington State Energy Facility Site Evaluation Council

AGENDA

MONTHLY MEETING
Tuesday, November 13, 2018
1:30 PM

1300 S Evergreen Park Drive SW
Olympia, WA 98504
Meeting Room 139

1. Call to Order Kathleen Drew, EFSEC Chair
2. Roll Call Tammy Mastro, EFSEC Staff
3. Proposed Agenda Kathleen Drew, EFSEC Chair
4. Minutes
Meeting Minutes Kathleen Drew, EFSEC Chair
 - October 16, 2018
5. Projects
 - a. Kittitas Valley Wind Project
 - Operational Updates Eric Melbardis, EDP Renewables
 - b. Wild Horse Wind Power Project
 - Operational Updates Jennifer Diaz, Puget Sound Energy
 - c. Grays Harbor Energy Center
 - Operational Updates Chris Sherin, Grays Harbor Energy
 - d. Columbia Generating Station
 - Operational Updates Mary Ramos, Energy Northwest
 - e. WNP – 1/4
 - Non-Operational Updates Mary Ramos, Energy Northwest
 - f. Chehalis Generation Facility
 - Operational Updates Mark Miller, Chehalis Generation
 - g. Columbia Solar Project
 - Project Updates Ami Kidder, EFSEC Staff
 - h. Whistling Ridge Energy Project
 - Project Update Jason Spadaro, Whistling Ridge
 - i. Desert Claim
 - Project Updates Amy Moon, EFSEC Staff
 - SCA Amendment Sonia Bumpus, EFSEC Staff
- EFSEC staff will provide an update and the Council will consider and may take Final Action on the certificate holders request to amend the SCA.
6. Adjourn Kathleen Drew, EFSEC Chair

ENERGY FACILITY SITE EVALUATION COUNCIL

Roll Call Checklist

Meeting Date: November 13, 2018 EFSEC Monthly Meeting

State Agency Members

Chair

Kathleen Drew ☒ Present ☐ Call

Commerce

Liz Green-Taylor ☒ Present ☐ Call

Ecology

Cullen Stephenson ☒ Present ☐ Call

Fish and Wildlife

Mike Livingston ☒ Present ☐ Call

Natural Resources

Dan Siemann ☐ Present ☒ Call

Utilities & Transportation Commission

☐ Present ☐ Call

Local Gov't. and Optional State Agency for the Columbia Solar Project

Dept. of Health

Kelly Cooper ☐ Present ☐ Call

Kittitas County

Ian Elliot ☐ Present ☐ Call

Assistant Attorney General

Ann Essko ☒ Present ☐ Call

Jon Thompson ☒ Present ☐ Call

Administrative Law Judge

Laura Chartoff ☐ Present ☐ Call

Council Staff

☐ Stephen Posner ☐ Patty Betts

☒ Sonia Bumpus ☐ Christina Potis

☒ Tammy Mastro ☐ Joan Aitken

☒ Ami Kidder ☐ Stew Henderson

☐ Amy Moon

In attendance

Present

| | | | |
|-----|---|-------------------------------------|-------------------------------------|
| 1. | Bill Sherman <i>Counsel for the environmental</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. | Chris Sherin <i>GHE</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. | Mark Miller <i>Chetelus</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. | Jason Spadaro <i>Whistling Ridge</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. | Tim McManah <i>A Homer for Whistling</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. | | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. | | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. | | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. | | <input type="checkbox"/> | <input type="checkbox"/> |
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| 17. | | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. | | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. | | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. | | <input type="checkbox"/> | <input type="checkbox"/> |

Court Reporter: _____

Kittitas Valley Wind Power Project

Monthly Operations Report

October 2018

Project Status Update

Production Summary:

Power generated: 9,086 MWh
Wind speed: 4.2 m/s
Capacity Factor: 12.1%

Safety:

No incidents

Compliance:

Project is in compliance

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Wild Horse Wind Facility

October 2018

Safety

No lost-time accidents or safety injuries/illnesses.

Compliance/Environmental

The general modern firearm elk season began on October 27th. In accordance with the Hunting Plan, permits for hunting on wind farm property we're issued through WDFW's Hunt by Reservation System. PSE contracted with WDFW enforcement for increased security during this busy season.

In accordance with the Operations Stormwater Pollution Prevention Plan (SWPPP), a semi-annual stormwater inspection was completed on 10/9. The site is in excellent condition and installed BMPs are functioning properly.

Operations/Maintenance

Nothing to report.

Wind Production

October generation totaled 38,029 MWh for an average capacity factor of 18.75%.

Eagle Update

Nothing to report.

EFSEC Monthly Operational Report Grays Harbor Energy Center

October 2018

1. Safety and Training

1.1. There were no accidents or injuries during the month and the plant staff has achieved 3590 days without a lost time incident.

2. Environmental & Compliance

2.1. There were no air emissions, outfall or storm water deviations, or spills during the month.
2.2. All routine reporting was completed.

3. Operations & Maintenance

3.1. Grays Harbor Energy Center (GHEC) operated 11 days during the month, with 3 starts on U1, and 3 starts on U2.

3.2. GHEC generated 131,492 MWh during the month and 2,357,728 MWh YTD.

3.3. The plant capacity factor was 28% for the month and 52% YTD.

On October 9, 2018 20:22 the plant was notified by Williams Northwest Pipeline that a pipeline explosion has occurred in British Columbia. At 20:59, the plant's third party power marketer notified plant staff that the plant was to shut down hour ending 22:00 (10 p.m.). There was a large pipeline explosion near Shelley, BC about 15 miles NE of Prince George on an Enbridge Pipeline. Commercial users were removed from the pipeline per contingency plans. Approximately 1/3 of the normal gas was available following the pipeline failure. By October 15th, the smaller 30" Pipeline was returned to service, initially at a reduced capacity. The larger 36" pipeline is still out of service with an estimate return to service sometime in November. It is speculated when the pipeline is returned to service, it will be at a reduced capacity. A road was built to the pipeline failure site and repairs have started. GHEC has only operated 1x1 three days (16, 17 & 18th) since the pipeline failure. Our third-party marketer, dispatched the plant after finding reasonably priced gas through intraday gas trading, instead of the normal day ahead trading. Gas prices have increased since, and the gas unit price to MW ratio has shrunk to an unprofitable level to warrant dispatching the plant to run.

4. Noise and/or Odor

4.1. None.

5. Site Visits

5.1. October 23th, GHEC conducted a tour of our facility for the Governor's Senior Energy Policy Advisor, Lauren McCoy, Senator Dean Takko, Senator Guy Palumbo, UTC Legislative Director, energy, Jon Noski, UTC Staffers Jason Ball and Kyle Murphy.

5.2. October 24th, Aberdeen High School 9th graders visited the plant for a tour and presentation for their annual Career Day.

6. Other

6.1. Grays Harbor Energy Center is staffed with 19 personnel.

**Energy Northwest
November 13, 2018 EFSEC Council Meeting
Operations Reporting Period for October 1-31, 2018
Site Contact: Mary Ramos**

Columbia Generating Station Operational Status

Columbia Generating Station is online at 100 percent power.

There are no events, safety incidents, or regulatory issues to report.

WNP 1/4 Building Transfer/Water

There are no events, safety incidents, or regulatory issues to report.

Chehalis Generation Facility----Monthly Plant Report – October 2018

Washington Energy Facility Site Evaluation Council

11.02.2018

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 1181 days without a Lost Time Accident.

Environment:

- There were no air emissions or stormwater deviations or spills during the month.
- Wastewater and Storm-water monitoring results were in compliance with the permit limits.

Operations and Maintenance Activities:

- The Plant generated 106,471 MW-hours in October for a 2018 YTD generation total of 1,679,454 MW-hours and a capacity factor of 46.53% for 2018.
- On October 9th the Chehalis plant experienced a curtailment of gas supply due to a failure in the Enbridge pipeline in northern British Columbia. PacifiCorp was notified by Williams-Northwest pipeline of the event and asked for assistance in maintaining gas system reliability by requesting curtailment of all natural gas fired generation. Williams-Northwest pipeline is the single pipeline provider from the Sumas hub to gas markets in the I-5 area of the Northwest. At approximately 2:00 a.m., October 10, 2018, Williams issued a formal force majeure notice limiting supplies from US-BC border at Sumas.
- On October 31st, Enbridge announced that it had successfully completed repairs on the section of its 36" natural gas pipeline that ruptured near Prince George, British Columbia, on October 9, 2018, and had begun the multi-hour process to return it to service.
 - Following the repairs, and a comprehensive integrity assessment, Enbridge expects to begin safely returning the repaired segment to service. As part of this process, Enbridge gradually increased flows of natural gas through the repaired segment until it reached 80 percent of its normal operating pressure. The 30" pipeline returned to service on October 11, 2018, also at 80 percent of its normal operating pressure – a measure to help ensure the ongoing safety and integrity of the system.
 - With the repaired segment of the 36" pipeline returning to service at a reduced pressure, the T-South system is estimated to safely deliver between 820 and 900 million cubic feet per day (MMcf/d) of much-needed natural gas to the lower mainland of British Columbia and the U.S. Pacific Northwest.

- Per the NEB-reviewed return-to-service plan, the T-South system was deemed fit for service at the reduced operating pressure. As part of our ongoing commitment to safety, we are conducting a comprehensive dig program at select locations along the T-South system. This work will help further validate the integrity of the entire system, prior to returning both the 30" and 36" pipelines to full operating capacity. Until we are fully satisfied it is safe to operate the lines at full capacity, and subject to regulatory review, both pipelines will continue to safely operate at reduced pressures.

Regulatory/Compliance:

- On October 9th, Ami Kidder EFSEC Siting Specialist visited the Chehalis plant for a site orientation and discussion of current compliance status.

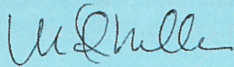
Sound monitoring:

- Nothing to report this period.

Carbon Offset Mitigation:

- Nothing to report this period.

Respectfully,



Mark A. Miller
Manager, Gas Plant
Chehalis Generation Facility



SDS Lumber Company

P.O. Box 266
Bingen, WA 98605

Office: 509-493-2155
Fax: 509-493-2535

October 25, 2018

Kathleen Drew, Chair
Washington Energy Facility Siting Council
1300 S. Evergreen Park Dr. S.W.
PO box 47250
Olympia, WA 98504-7250

Dear Chair Drew and Councilmembers:

I am the President of SDS Lumber Company and Whistling Ridge Energy LLC, the owner of the Whistling Ridge Energy Project ("Whistling Ridge" or "Project"). I am submitting a status report for the Whistling Ridge project, in accordance with RCW 463-68-060. Attached to this report is a "Project History" timeline that helps in understanding the status of this Project.

The "Effective Date" of the Site Certificate Agreement ("SCA") is November 18, 2013 -- the date when I executed the SCA (after conclusion of the Supreme Court appeal). Further opposition litigation followed the execution of the SCA, with 9th Circuit Court of Appeals challenges fully exhausted in July of this year. Due to the uncertainties associated with these appeals, thus far it has not been possible to move the Project forward.

We provide the following information, pursuant to RCW 463-68-060.

WAC 463-68-060

Review and reporting changes in the project status or site conditions.

(1) The nature and degree of any changes to the following since the effective date of the site certification agreement:

- (a) Project design;*
- (b) Statements and information in the application;*
- (c) Statements and information in project-related environmental documents;*

and

(d) Project-related environmental conditions.

(2) Whether any new information or changed conditions indicate the existence of probable significant adverse environmental impacts that were not covered in any project-related environmental documents, including, but not limited to, those prepared under chapter 43.21C RCW.

(3) Suggested changes, modification, or amendments to the site certification agreement and/or any regulatory permits.

RESPONSE:

Section 1: At this time, the Project is not proposing any changes as described in Section 1 of the statute.

Section 2: There is no new information or changed conditions known at this time that might indicate the existence of any probable significant adverse environmental impacts not previously addressed in the EFSEC FEIS.

Section 3: Finally, at this time, Whistling Ridge is not proposing any changes, modifications or amendments to the Site Certificate Agreement of any regulatory permits. It is possible that such changes will be proposed in the future.

Thank you for the opportunity to make this presentation. We will appreciate the opportunity to address any questions.



Jason S. Spadaro
President
SDS Lumber Company

Whistling Ridge Energy Project History

- 3/10/09 Application for Site Certification filed; history of adjudication can be found on EFSEC's Project web page.
- 1/5/12 EFSEC's Site Certificate Agreement and Recommendation submitted to Governor Gregoire.
- 3/5/12 Governor Gregoire approves the Final Order and signs the Site Certificate Agreement.
- 8/20/13 After appeal by project opponents, the Washington Supreme Court issues a unanimous decision denying appeal.
- 11/18/13 Jason Spadaro, Whistling Ridge Energy, signs the Site Certificate Agreement ("Effective Date" of Site Certificate Agreement)
- 2013-15 During this period, BPA worked on the FEIS and its Supplement to the FEIS, addressing further comments submitted post-FEIS by project opponents.
- 9/9/15 Project opponents file an appeal with the US 9th Circuit Court of Appeals, challenging BPA's NEPA FEIS, supporting BPA's decision to grant the Whistling Ridge Energy Project an interconnection to the Federal Columbia River Transmission System.
- 3/27/18 The 9th Circuit Court of Appeals issues a Memorandum Decision denying the appeal.
- 7/11/18 Following a petition by project opponents for a rehearing (*en banc*), the full US 9th Circuit Court of Appeals denied rehearing. This denial concluded all opposition litigation.



STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL
PO Box 47250 • Olympia, Washington 98504-7250

Memorandum

To: Stephen Posner, EFSEC Manager, (360) 664-1903
From: Sonia E. Bumpus, EFSEC Siting and Compliance Manager, (360) 664-1363
Date: November 7, 2018

RE: Revised Environmental Review and Staff Recommendation for State Environmental Policy Act (SEPA) Review for Desert Claim Wind Power Project Request for Amendment to the Site Certification Agreement

PROPOSAL: On February 26, 2018, the Certificate Holder, Desert Claim Wind Power LLC, requested an amendment to their Site Certification Agreement (SCA) that was issued on February 1, 2010. The approved SCA is for constructing a wind power facility consisting of a maximum of 95 wind turbines on tubular steel towers with 190 total megawatts (MW) and a tower height not to exceed a maximum height of 410 feet within an approximately 5,200 acre project site. The project is located north and west of Ellensburg near the intersection of U.S. Route 97 and Smithson Road. Site access during construction was primarily from Reecer Creek Road. Seven non-participating residences are located between 1,687 and 2,241 feet of one or more turbines. No temporary or permanent stream or wetland impacts were identified during the environmental analysis initially conducted by EFSEC. As a result, measures to address these types of impacts were not included in the original SCA.

The revised proposal is for constructing and operating a smaller facility consisting of 25-31 turbines not to exceed 492 feet in height and 100 MW. The project remains at the same site with acreage reduced to 4,400 acres in which approximately 370 acres have been added to the west and south and 1,271 acres have been removed east of Reecer Creek. Primary site access during construction and operation has been changed to Smithson Road (accessed from Hwy 97). All turbines are located at least 2,500 feet from all residences in the revised proposal. A total of 0.347 acres of permanent wetland impacts and 0.026 acres of permanent stream impacts are proposed. An additional 1.949 acres (0.126 acres stream and 1.823 acres wetland) temporary impacts are proposed to streams and wetlands. There is an expected 66% decrease in turbine delivery trips and 10% increase in concrete trucks per hour during construction.

CASE NUMBER: EFSEC SCA No. 2006-02
Docket No. 180105

CERTIFICATE
HOLDER: Desert Claim Wind Power LLC

LOCATION: Kittitas County, Washington.

OTHER PERMITS: Implementation of this revised proposal would require the following permits or approvals (*included in Proposed SCA Amendment):

| Permit or Requirement | Agency Code, Ordinance, Statute, Rule, Regulation, or Permit |
|----------------------------------|--|
| Threatened or Endangered Species | U.S. Fish and Wildlife Service Endangered Species Act of 1973 (16 USC, Section 1531, et seq.) and implementing regulations. Designates and provides for protection of threatened and endangered plants and animals and their critical habitat. |
| Migratory Birds | U.S. Fish and Wildlife Service Migratory Bird Treaty Act (16 USC 703-711) |
| Bald Eagles | U.S. Fish and Wildlife Service Bald and Golden Eagle Protection Act (16 CFR 668-668c) Eagle permit regulations (50 CFR 22) |
| Waters of the United States* | U.S. Army Corps of Engineers, Seattle District Clean Water Act of 1972 (Waters of the U.S. 1986/1988 regulatory definition in 40 CFR 230.3) Joint Aquatic Resource Permit Application (JARPA) for Section 404 fill in Waters of the U.S. |
| Electrical Construction Permit | Washington Department of Labor and Industries WAC 296-746A, Washington Department of Labor and Industries Safety Standards – Installing Electrical Wires and Equipment – Administration Rules. |
| Noise Control | Washington Department of Ecology RCW 70.107, Noise Control; WAC 173-58, Sound Level Measurement Procedures WAC 173-60, Maximum Environmental Noise Levels; WAC 463-62-030, Noise Standards* |

| Permit or Requirement | Agency Code, Ordinance, Statute, Rule, Regulation, or Permit |
|--|---|
| Water Quality Storm Water Discharge: Construction Activities | <p>Washington Department of Ecology</p> <p>RCW 90.48, Water Pollution Control Act, establishes general stormwater permits for the Washington Department of Ecology National Pollutant Discharge Elimination System Permit Program</p> <p>WAC 173-201A, Washington Department of Ecology Water Quality Standards for Surface Waters of the State of Washington, which regulates water quality of surface waters</p> <p>WAC 173-220, National Pollutant Discharge Elimination System Permit Program. Construction Stormwater General Permit</p> <p>Federal statute(s) and regulations implemented by the above state statute(s) and regulations include: Federal Clean Water Act, 42 USC 1251; 15 CFR 923-930</p> <p>Kittitas County Code (KCC) 12.06 – Roads and Bridges – Storm Water Management Standards</p> <p>KCC 12.07 – Roads and Bridges - Bridges and Major Drainage Structures</p> |
| Fish and Wildlife | <p>Washington Department of Fish and Wildlife</p> <p>WAC 220-610, defines State species status and protections</p> <p>WAC 232-12, Washington Department of Fish and Wildlife Permanent Regulations, provides information on classification of wildlife species, including "Priority Habitats and Species"</p> <p>RCW 77, Hydraulic Code for in-water work</p> |
| State Environmental Policy Act (SEPA) | <p>RCW 43.21C, Washington Environmental Policy Act</p> <p>WAC 197-11, Washington Department of Ecology SEPA Rules, which establishes uniform requirements for compliance with SEPA</p> |
| Archaeology and Historic Preservation | <p>National Historic Preservation Act (Public Law 89-665)</p> <p>Washington State Department of Archaeology and Historic Preservation*</p> <p>RCW 27.53, Archaeological Sites and Resources</p> <p>RCW 27.53, Indian Sites and Resources Act</p> <p>RCW 27.44, Indian Graves and Records Act</p> |
| Comprehensive Plan | Kittitas County Comprehensive Plan, 2000–2020 |
| Zoning Ordinance, including Critical Areas Ordinance | <p>KCC 17 - Zoning</p> <p>KCC 17A – Critical Areas</p> |
| Access Permit | KCC 12.05, Roads and Bridges – Driveways and Accesses |
| Grading Permit (if necessary) | KCC 14.05, Buildings and Construction - Grading |
| Aviation & Lighting | <p>Federal Aviation Administration – Federal Aviation Regulations</p> <p>49 USC 44718, Structures interfering with air commerce or national security</p> <p>14 CFR 77, Safe, Efficient Use, and Preservation of the Navigable Airspace</p> |

Notes: CFR = Code of Federal Regulations; KCC = Kittitas County Code; RCW = Revised Code of Washington; USC = United States Code; WAC = Washington Administrative Code

REQUIRED

SUBMITTALS:

The following documents are required as noted in the original SCA and the proposed SCA Amendment:

- Temporary Erosion and Sediment Control (TESC) Plan
- Stormwater Pollution Prevention Plan (SWPPP)
- Construction Spill Prevention, Control and Countermeasure Plan (Construction SPCCP)
- Initial Site Restoration Plan (Initial SRP)
- Final Site Restoration Plan (Final SRP)
- Wetland Compensatory Mitigation Plan
- Wetlands Restoration Plan
- Construction Soil Management and Vegetation Plan
- Habitat Restoration Plan
- Pre-Construction Raptor Nest Survey
- Pre-Construction Townsends Ground Squirrel Survey
- Habitat Mitigation Plan
- Noxious Weed Control Plan
- Establish a Technical Advisory Committee (TAC)
- Site Management Plan (to identify environmental features and wildlife areas)
- Cultural Resources Monitoring and Mitigation Plan
- Fire Control Plan – Construction Phase
- Fire Control Plan – Operations Phase
- Construction Traffic Management Plan
- Construction Emergency Plan
- Construction Phase Health and Safety Plan
- Construction Phase Site Security Plan
- Construction Management Plan
- FAA Determination of Non-Hazard Certificates
- Final Construction Plans (plans, specifications, drawings, and design documents)
- Final Project Layout Plan
- Environmental Compliance Program
- Operations SWPPP
- Operations SPCCP
- Operations Emergency Plan
- Post-Construction Avian Monitoring Plan
- Post-Construction Bald Eagle Study Plan
- Pre-Operational Bat Survey and Bat Monitoring Plan
- Operations Phase Health and Safety Plan
- Operations Phase Site Security Plan

A. ENVIRONMENTAL RECORD and EXHIBITS

The environmental review conducted by EFSEC consisted of analysis based on the following documents included in the environmental record. The documents listed are available for review on EFSEC's website at: http://www.efsec.wa.gov/Desert_Claim/SCA.html

- Environmental Checklist received February 26, 2018
- Desert Claim Wind Power Project Request for an Amendment to the Site Certification Agreement (SCA) received February 26, 2018, EFSEC Original Application No. 2006-02
- Desert Claim Wind Power Project May 30, 2018 Staff Site Visit Report
- Desert Claim Wind Power Project EFSEC Site Certification Agreement Amendment Wetlands Report, Grette Associates, January 31, 2018.
- Desert Claim Wind Power Project Wetland Delineation and Analysis Report, Grette Associates, May 2018
- Desert Claim Wind Power Project Compensatory Mitigation Plan, Grette Associates, July 2018

- Desert Claim Wind Project Environmental Noise Assessment Technical Report, Ramboll US Corporation, February 2018
- Environmental Noise Assessment Technical Report for the revised Desert Claim Wind Project, Ramboll US Corporation, May 25, 2018
- Shadow Flicker Study Desert Claim Wind Project, EDF Renewable Energy, January 30, 2018
- Kittitas County 2016 Comprehensive Plan
- Visual Effects Assessment, Desert Claim Wind Power Project, Golder Associates Inc., September 7, 2018
- Certificate Holder Responses to Data Request 1, April 16, 2018
- Certificate Holder Responses to Data Request 2, May 25, 2018
- Certificate Holder Responses to Data Request 3, August 1, 2018 and August 21, 2018
- Cultural Resource Assessment of Updated Project Design for the Desert Claim Wind Power Project, Archaeological Investigations Northwest, Inc., February 9, 2018

The environmental review also consisted of input or recommendations from State and Federal agencies, tribes, and EFSEC's consultant via several forms of communication, as listed below.

| Commenter and Acronym | Date of Comment | Form of Comment | Resource Subject |
|---|-----------------|---|--|
| Washington Department of Ecology (Ecology) | 08/30/2018 | Letter from Lori White | Wetlands |
| Washington Department of Fish and Wildlife (WDFW) | 05/02/2018 | Phone - with Scott Downes | Animals (birds and bats) |
| Washington State Department of Archaeology and Historic Preservation (DAHP) | 07/31/2018 | Historic Property Report for N. Branch Canal Farm Bridge Station No 346 | Historic |
| Washington State Department of Archaeology and Historic Preservation (DAHP) | 04/19/2018 | Letter from Gretchen Kaehler | Cultural Resource Assessment |
| Washington Department of Fish and Wildlife (WDFW) | 04/20/2018 | Email and attached Letter from Scott Downes | Wildlife, habitat and wetland/ streams |
| Washington Department of Ecology (Ecology) | 09/07/2018 | Letter from Lori White | Wetland Addendum |
| Washington Department of Natural Resources (DNR) | 05/09/2018 | Phone call with Wyatt Leighton | Environmental Health (Aerial firefighting) |
| EFSEC Consultant (Golder Associates) | 09/07/2018 | Email Correspondence | Comprehensive Plan Review (compare 2016 to 1996) |
| Federal Aviation Administration (FAA) | 09/14/2018 | Email Correspondence | FAA Non-Hazard Certification |
| Federal Aviation Administration | 07/19/2018 | Email Correspondence | Aircraft Detection Lighting System (ADLS) |
| Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) | 11/07/2018 | Phone call and Email from Jessica Lally | Cultural Resource Assessment |

B. STAFF REVIEW OF THE ENVIRONMENTAL CHECKLIST AND PUBLIC COMMENTS

EFSEC and its consultant (Golder Associates), the Certificate Holder (Desert Claim Wind Power LLC) and their consultant (Grette Associates), and Department of Ecology's wetlands specialist visited the site on May 30, 2018.

The following sections correspond with elements of the environment listed in WAC 197-11-444 and with the sections in the environmental checklist WAC 197-11-960, and were used to organize and document EFSEC's environmental review of the revised proposal. Additional

information provided by the Certificate Holder in their SCA amendment request, existing SEPA documents, and EFSEC's consultants were used as part of the environmental review.

EFSEC published a draft SEPA Addendum, dated September 25, 2018. A public comment period was held September 26, 2018 through October 10, 2018. Three public comments were submitted and reviewed by EFSEC staff to identify substantive issues. Consequently, one of the proposed mitigation measures related to cultural resources was revised in light of the public comments received. Final mitigation measures have been updated and documented in the Final SEPA Addendum, dated November 5, 2018. The following sections in this Revised SEPA Staff Memo have been updated to include discreet comments relevant to SEPA environmental review and EFSEC responses. Discreet issues are discussed in detail under their respective resource area below. Concerns raised during the 15 day SEPA public comment period include the following:

- Potential water quality impacts to Dry Creek, Green Canyon Creek, Reecer Creek, and Jones Creek for stream heating and bacterial contamination.
- Potential impacts to wetlands and streams.
- Potential impacts from turbine noise- require highest noise standards and monitoring.
- Potential visual impacts from taller turbines, spacing between turbines- visual confusion and disunity.
- Potential impacts from turbine lighting- encourage use of Aircraft Detection Lighting System (ADLS).
- Cultural Resource- concern from the Certificate Holder on the proposed mitigation measure and SCA requirement to adhere to their Memorandum of Understanding (MOU) with the Yakama Nation.
- Potential impacts to transportation during construction associated with concrete truck delivery trips.

1. EARTH

No new or increased adverse environmental impacts are expected from the amended proposal. No mitigation measures recommended.

2. AIR

No new or increased adverse environmental impacts are expected from the amended proposal. No mitigation measures recommended.

3. WATER

- a. A Construction Stormwater General Permit (CSWGP) would be required as part of the Site Certification Agreement approval. The Certificate Holder would be required to comply with the permit to protect water quality during construction activities.
- b. Impacts to Wetlands, Streams, and Riparian Areas On-Site.

Ecology and EFSEC reviewed the May 2018 Wetland Delineation and Analysis Report. Permanent impacts to approximately 0.026 acres associated with 13 streams and 0.347 acres associated with 8 wetlands are anticipated. The Certificate Holder proposes to conduct required mitigation by enhancing three onsite wetlands. Final mitigation would be developed to fully mitigate for any permanent impacts identified, and for the size of buffers based on Best Available Science (BAS).

Wetland enhancement may include removing existing cattle grazing uses, installing exclusion fencing, and planting bare areas with plug sized herbaceous vegetation. EFSEC and Ecology reviewed the credit/debit analysis proposed by the Certificate Holder and concluded there would be "no net loss" of wetland function within the project area with proposed mitigation (Ecology 09/07/2018).

The Certificate Holder proposed wetland mitigation monitoring for 5 years in the SCA Amendment; however, Ecology recommended a monitoring period of 10 years for the project (Ecology 09/07/2018). A compensatory mitigation plan will be submitted prior to beginning site preparation, EFSEC will coordinate with Ecology and WDFW for approval of the plans.

Temporary impacts to approximately 0.126 acres of streams and 1.823 acres of wetlands are anticipated as a result of underground utility installation and crane access. Temporary impacts would be minimized through sediment and erosion control Best Management Practice (BMP) implementation and Spill Prevention, Control, and Countermeasure Plan implementation.

10/5/18 Public Comment received from the Washington Department of Ecology (Ecology) regarding the protection of impaired waterbodies. In summary, Ecology commented that Dry Creek, Green Canyon Creek, Reecer Creek, and Jones Creek flow through the project area and are included in the Upper Yakima River Tributaries Temperature Total Maximum Daily Load (TMDL) water quality improvement project. Therefore, these streams must be protected from additional stream heating. Ecology requested that the project avoid removal of existing streamside vegetation during construction, as well as during future operations. The TMDL also recommends that supplementary shade, via installation of new riparian plants, should be added where possible. In addition, the Reecer Creek reach located immediately upstream of the Kittitas Reclamation District canal is included in Washington State's list of 303(d) impaired waterbodies due to high levels of fecal coliform bacteria. It is important that project planning and construction, and all future use of the site, include water quality protection to avoid further bacterial contamination in Reecer Creek. Ecology stated that a CSWGP and the development of a SWPPP will be required for off-site construction stormwater discharges.

Comment Response: The proposed mitigation in the SCA Amendment requires the Certificate Holder to coordinate with WDFW and Ecology regarding finalizing construction and operating plans to avoid or minimize temporary and permanent impacts on streams and wetlands. Prior to construction a final set of wetland buffers, setbacks, and mitigation standards for permanent and temporary impacts must be determined by EFSEC in consultation with Ecology. The SCA Amendment includes the requirement to develop a Temporary Erosion and Sediment Control (TESC), Stormwater Pollution Prevention Plan, Wetland Compensatory Mitigation Plan (SWPPP), Habitat Mitigation Plan, and Construction Soil Management and Vegetation Plan. These plans will address

protection of impaired waterbodies as will the Construction Stormwater General Permit that is required for discharging construction stormwater off-site.

No further mitigation measures are recommended.

Proposed mitigation: Wetlands, Streams and Riparian Areas.

While finalizing construction plans, the Certificate Holder will coordinate with WDFW and Ecology regarding finalizing construction and operating plans, in relation to micro-siting of project facilities and roads, in order to avoid or minimize the facility elements' temporary and permanent impacts on streams and wetlands.

The Certificate Holder will be required to conduct wetland mitigation monitoring for a period of 10 years.

Prior to construction of the site, a final set of wetland buffers, setbacks, and mitigation standards for permanent and temporary impacts shall be determined by EFSEC in consultation with Ecology. Wetland buffers shall be determined in accordance with applicable provisions of the Kittitas County Code for Critical Areas in KCC 17A. Where supported by the following Ecology guidance documents, EFSEC may require buffers of greater width than would be required under KCC 17A: Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance, Ecology Publication #06-06-011a (March 2006); Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans, Ecology Publication #06-06-011b (March 2006); Update on Wetland Buffers: The State of the Science, Final Report, Ecology Publication #13-06-011 (October 2013). Based on the final wetlands requirements from EFSEC, the Certificate Holder shall submit a Wetlands Mitigation Plan to EFSEC for approval at least sixty (60) days prior to the beginning of Site Preparation, which shall summarize how the Site is in compliance with those wetland buffers, setbacks, and mitigation standards.

This mitigation applies to SCA Amendment: ARTICLE IV.E and ARTICLE V.

4. PLANTS

No new or increased adverse environmental impacts to plants are expected from the amended proposal. No mitigation measures recommended.

5. ANIMALS

- a. The Certificate Holder has agreed to establish a Technical Advisory Committee (TAC). A Post-Construction Avian Monitoring Plan will be developed in coordination with the TAC.
- b. Possible impacts on birds and bats from turbines located in the amended project area, from taller turbines and longer blades.

EFSEC in coordination with WDFW, reviewed the SCA Amendment materials and determined the amended project location is not in an obvious migration route. An excessive amount of birds around the rotor-swept area is not expected. WDFW's review concluded that impacts and mortality are expected to be similar to those experienced by EFSEC's Kittitas Valley Wind Farm facility (WDFW 5/2/2018). Although the turbine

blades will be longer and create a larger wind swept area for each turbine, the decrease from a maximum of 95 turbines to a maximum of 31 turbines for the amended project would result in a 36-48% reduction in rotor swept area. This reduction would reduce bird/bat interaction with turbine blades than was analyzed in the FSEIS for the original project, (Desert Claim Wind Power Revised Project Description). WDFW requests that the Certificate Holder work with them on several plant, animal, and wetland topics listed in the amended SCA and finalize well before construction, including an opportunity to participate in micro-siting of roads that might further reduce stream or wetland impacts (WDFW 4/20/2018). Per the SCA Amendment, the Certificate Holder is required to coordinate with WDFW to develop a Habitat Mitigation Plan, Habitat Restoration Plan, Pre-Construction Raptor Nest Survey, and a Pre-Construction Townsends Ground Squirrel Survey.

No new or increased adverse environmental impacts to animals and their habitats are expected from the amended proposal. No other mitigation measures recommended.

6. ENERGY AND NATURAL RESOURCES

- a. The creation of congestion on existing lines would not be considered an adverse environmental impact. It may limit the usability of the energy that is produced by the project.

No new or increased adverse environmental impacts to energy are expected from the amended proposal. No mitigation measures recommended.

7. ENVIRONMENTAL HEALTH

- a. Possible impact to aerial firefighting abilities of planes to fly and drop water on fires in areas with turbines.

Turbines can create an additional hazard and complication for aerial firefighting which is a desirable method for protecting residences from fire. As long as there is some buffer between the turbines and residences, aerial firefighting methods can be used. EFSEC coordinated with DNR. Based on that coordination, EFSEC determined the turbine distance of 2,500 feet from a residence is adequate. In regards to fire fighting in general, wind farms can be advantageous because they add roads to an otherwise rural area where roads may not exist (DNR/Wyatt Leighton 05/09/2018).

- b. Possible impacts from taller turbines to aeronautic approaches to Kittitas County Airport (Bowers field) and Federal Aviation Administration (FAA) review of the amended proposal for hazards to aeronautic approaches to Bowers field.

The SCA requires that the Certificate Holder provide copies of the determination of non-hazard certificates issued by the FAA and other information to EFSEC, which demonstrate that the Project will not impact approved flight approaches, flight communications, or operations at the Kittitas County Airport (Bowers Field) prior to the start of construction.

- c. Potential for shadow flicker affecting residences.

Turbines will be placed greater than 2,500 feet from residences. Residences may experience brief periods of shadow flicker.

EFSEC reviewed a study on shadow flicker (EDF Renewable Energy 01/30/2018), which indicates that up to 30 residences would experience a maximum of 22-50 minutes per day (2.4 hours to 40.5 hours per year) of shadow flicker from wind turbines. The Certificate Holder proposed a revised mitigation measure for shadow flicker in their SCA Amendment request. The original SCA condition required the Certificate Holder to shut down a turbine for the duration of a shadow flicker impact upon the written request of a nonparticipating landowner for residences within 2,500 feet. Based on EFSEC's environmental review of this issue, shut down of the turbine by programming the control system of a wind turbine to stop the blades, when operating conditions result in a perceptible shadow flicker, is the most effective measure for mitigating shadow flicker impacts. Shadow flicker may also be addressed by planting trees, shading windows, or implementing other mitigation measures. Because the original SCA mitigation measure for shadow flicker included only one mitigation option (avoidance) there was no need for EFSEC to provide any oversight on mitigation options. However, the amended language allows for multiple options.

The proposed mitigation in the September 25, 2018 SEPA Addendum has been supplemented to include a clarification that EFSEC review and approval of the mitigation and complaint monitoring plan includes review and approval of any denials of any complaint requests as well as review and approval of the mitigation selected to address individual complaints.

Proposed mitigation: Shadow Flicker Mitigation Measures

Develop a mitigation and complaint monitoring plan to respond to any residential complaints. The mitigation plan will include avoidance, minimization, and mitigation of shadow flicker through turbine shut down, planting trees, shading windows, or other mitigation measures. The complaint monitoring plan will be reviewed and approved by EFSEC prior to operation and, at a minimum, will include:

- Notification of EFSEC within five (5) business days of receipt of any request to mitigate shadow flicker,
- Notification of EFSEC, within two (2) weeks of original receipt, of the actions taken in response, and
- EFSEC shall retain authority to review and override the Certificate Holder's denial(s) of any requests or choice of mitigation in this regard.

This mitigation applies to SCA Amendment: ARTICLE VII.H.

8. NOISE

- a. Noise from operation of wind turbines.

EFSEC and its consultant reviewed the Environmental Noise Assessment Technical Reports to assess the Project's compliance with Washington Administrative Code 173-

60-040 for noise. Based on the noise inputs and baseline data detailed in the assessment report and follow-up technical memo, the expected noise levels were below the most limiting standard of 50 decibels (dBA) for the wind turbine generator and electrical substation for all modeled scenarios. These levels comply with WAC 173-60-040.

Review by EFSEC and its consultant determined that low frequency noise (or aeroacoustic noise) generated by the turbine blade moving through the atmosphere was not addressed in the technical information provided by the Certificate Holder. Although noise from wind turbine generators are not anticipated to exceed noise standards, it is possible that low frequency noise may be perceived as a nuisance. A complaint-based noise monitoring plan/protocol could be developed prior to construction and implemented during operation to respond to complaints related to operational noise.

Noise models conducted show no exceedances of noise standards and while low frequency nuisance noise is not expected, a complaint-based monitoring plan and follow up response procedure for any reported nuisance noise would ensure any unexpected noise issues could be mitigated during operation.

10/10/18 Public Comment from a member of the public regarding the noise monitoring plan. In summary, the comment requested that the applicant be held to the strictest standards in their noise monitoring plan.

Comment Response: The proposed mitigation in the SCA Amendment includes Complaint-Based Noise Monitoring and Response Plan submittal to EFSEC for review and approval prior to operation to address low frequency noise and aeroacoustic noise.

No further mitigation measures are recommended.

Proposed mitigation: Noise Emissions.

The Certificate Holder shall submit a Complaint-Based Noise Monitoring and Response Plan to EFSEC for review and approval prior to operation, to address low frequency noise and aeroacoustic noise.

This mitigation applies to SCA Amendment: ARTICLE VII.B.

9. LAND AND SHORELINE USE

- a. The Desert Claim project is not within the Wind Farm Resource overlay district as defined in the Kittitas County 2016 Comprehensive Plan (KCCP).

However, the 2016 KCCP identifies siting criteria for areas outside the Wind Farm Resource overlay district. The Wind Farm Overlay Zone is included in Kittitas County Code (KCC) 17.61A. The Desert Claim project is not within this zone. The Desert Claim project area is classified as rural working land, zoned as Ag 20 and Forest and Range. This zoning is consistent with the zoning that was in place in 2010 when the Desert Claim SCA was issued by EFSEC.

- b. The Kittitas County 1996 Comprehensive Plan (KCCP) did not contain language specific to energy facilities or wind energy when the original SCA for Desert Claim was issued.

EFSEC and its consultant reviewed and compared the 1996 KCCP to the updated 2016 KCCP. The 2016 KCCP identifies goals, policies, and objectives (GPOs) to protect, preserve, maintain, and enhance the County's natural resource industry base including energy resources. According to the 2016 KCCP, factors that should be used as the basis for siting decisions for energy facilities are: 1) Minimal health risk to residents of neighboring properties, whether from noise, fumes, radiation or other hazards; 2) Minimal visual impact, achieved with buffering through distance and/or landscaping; 3) For power lines and transmission/ reception towers, no adverse impact on aviation traffic patterns; 4) Convenient access (may not be needed if the facility is automated); 5) Encourage use of cold weather engineering practices to cope with power outages; and 6) Ensure that new developments are designed with facilities to withstand a minimum 48-hour power outage.

No new or increased adverse environmental impacts to land use, are expected from the amended proposal. No mitigation measures recommended.

10. HOUSING

- a. The turbines will be located greater than 2,500 feet from residences.

No new or increased adverse environmental impacts to housing are expected from the amended proposal. No mitigation measures recommended.

11. VISUAL AND AESTHETICS

- a. Possible impacts from increased turbine height.

EFSEC's consultant conducted an independent Visual Effects Assessment which concluded that the proposed turbine configuration in the amended SCA would reduce visual impacts relative to the previously permitted project.

Taller turbines would not increase visual/aesthetic impacts to a significant level and in areas where the number of turbines have been reduced as compared to the previously approved proposal, the amended proposal would reduce impacts.

10/10/18 Public Comment from a member of the public regarding visual impacts of the turbines during operation. In summary, the commenter expressed concern regarding the tallest land turbines on earth being sited next to many homes without EFSEC finding any significant impacts and more specifically concern regarding visual impacts to residences on Smithson Road. Concern was also expressed regarding the variation in size of the turbines and various distances apart from one another and differing turbine models causing visual confusion and disunity.

Comment Response: EFSEC's consultant determined that from this viewing location, Project features would be distinct and would attract viewer attention; however, fewer turbines will be visible than the previous configuration in the SCA.

The independent Visual Effects Assessment indicated that construction and decommissioning activities and components would likely be visible to those viewers adjacent to the work sites (e.g. viewers along Smithson Rd. and at nearby residences) with a localized effect that would be experienced for a relatively short duration (weeks to months). The previous visual assessment in the FEIS and FSEIS also indicated a moderate level of visual impact related to this general location.

The technical approach used in the Visual Assessment (and previous visual assessments in the FEIS and FSEIS) did consider dimensions of vividness, intactness, and unity, as well as the degree of visual dominance of the Project to determine the changes to visual quality. The established Federal Highway Administration (FHWA) definition of 'unity' refers to the visual coherence and compositional harmony of the viewshed where effects are evaluated based on the degree to which they disrupt the harmony of the landscape setting. The visual assessment (Visual Effects Assessment Section 4.1.1) as well as the photos and simulation provided by Truescape (Visual Effects Assessment Appendix A – Sheet 8 and Sheet 9) illustrate that the views of the valley from this area are dominated by agricultural development and currently include evident wind projects in the northwest portion of the study area. Based on the existing visual quality and character visible from this area, while distinct, the Project features would not substantially affect the visual unity of the views or be incoherent within the context of the surrounding landscape.

No new or increased adverse environmental impacts to visual and aesthetics are expected from the amended proposal. No mitigation measures recommended.

12. LIGHT AND GLARE

a. Possible impacts from turbine lighting.

The FSEIS identifies flashing lights at night as an impact to viewing the night sky. New mitigation in the form of radar based aircraft detection lighting has become available that could offset some of this impact. While no new or increased impacts are expected for the amended SCA, the application of an Aircraft Detection Lighting System (ADLS) would be beneficial at reducing the nonsignificant impacts of the amended proposal.

10/10/18 Public Comment from a member of the public regarding turbine lighting. In summary, the commenter encouraged the use of ADLS.

Comment Response: The proposed mitigation in the SCA Amendment requires the Certificate Holder to investigate the application of ADLS prior to construction and report its finding to EFSEC. The report will include the benefits and feasibility of ADLS for the project.

No further mitigation measures are recommended.

Proposed mitigation: Light, Glare and Aesthetics.

The Certificate Holder shall investigate the application of an Aircraft Detection Lighting System (ADLS) prior to construction and report its findings to EFSEC. The report should include the benefits and feasibility of ADLS for the Desert Claim project.

This mitigation applies to SCA Amendment: ARTICLE V.J.

13. RECREATION

Hunting will not be allowed in the Project Area during construction. No mitigation measures recommended.

No new or increased impacts to recreation are expected from the amended proposal. No mitigation measures recommended.

14. HISTORIC AND CULTURAL PRESERVATION

- a. Possible impacts to historic and cultural resources included review of the Desert Claim amended project proposal's compliance with RCW 27.53.

In conducting its environmental review, EFSEC coordinated with the Department of Archaeology and Historic Preservation (DAHP) and reviewed the FSEIS prepared by EFSEC, which identified a Memorandum of Understanding (MOU) between Desert Claim and the Yakama Nation.

EFSEC staff also reviewed information submitted related to the historic status of the Kittitas Division North Branch Canal Farm Bridge Station No 346.

DAHP recommended a pre-construction archaeological survey and the development of an archaeological monitoring schedule for any archaeological sites that can't be avoided during construction (4/19/2018 and 9/2/2018). DAHP also recommend the development of an Inadvertent Discovery Plan (IDP). DAHP determined the Kittitas Division North Branch Canal Farm Bridge Station No 346 is not eligible for the historic register.

The Certificate Holder consulted with the Yakama Nation and entered into a Memorandum of Understanding (MOU) concerning surveys that will be performed prior to construction to identify traditionally important plants and root gathering grounds, Traditional Cultural Properties (TCPs), and archaeological sites of interest to the Yakama Nation.

No new or increased impacts are expected from the amended proposal after DAHP final review and recommendations are implemented. Prior to construction, the Certificate Holder shall obtain all necessary DAHP permits and perform all necessary archaeological work in order to comply with RCW 27.53. The Certificate Holder will comply with their MOU with the Yakama Nation.

10/10/18 Public Comment from the Certificate Holder regarding the requirement to adhere to their MOU with the Yakama Nation. The comment explained that the MOU document is a "Scope of Work" between the Certificate Holder and the Yakama Nation, the contents of which EFSEC does not know; and this it is not a binding agreement between the two parties. The Certificate Holder's comment further explained that some activities identified in the "Scope of Work" document have already been completed. The Certificate Holder also expressed concerns about the appropriateness of EFSEC including a requirement that relates to a private document between the Certificate Holder and the Yakama Nation.

Comment Response: Proposed mitigation in the draft SEPA Addendum, dated September 25, 2018, requiring the Certificate Holder to adhere to the MOU was developed based on EFSEC's initial SEPA environmental review of the FSEIS and the SCA Amendment request materials submitted by the Certificate Holder (Desert Claim). Input to EFSEC from DAHP was also considered to develop the proposed mitigation measure in the draft SEPA Addendum.

For example, the FSEIS discussed additional cultural resource surveys to be conducted by the Certificate Holder; it states, "the Applicant has also agreed to conduct additional surveys of Traditional Cultural Properties (TCPs) of importance to the Yakama Nation and to work with the Yakama Nation to prepare a Traditional Cultural Resources Mitigation Plan." The mitigation measure included that the cultural resource mitigation plan be developed in consultation with the Yakama Nation and DAHP. According to the FSEIS, the plan "would include mitigation measures tailored to the specific circumstances of each resource and would be consistent with applicable federal, state, and local regulations", (FSEIS, Section 3.3.5, Mitigation Measures).

The FSEIS also acknowledged the MOU and characterized its intended purpose, that the "MOU addresses concerns expressed by the Yakama Nation's comments on the Draft SEIS, and provides a framework for developing a Traditional Cultural Resources Mitigation Plan with the Yakama Nation", (FSEIS, Section 3.3.5, Mitigation Measures).

In DAHP's comments to EFSEC, they concurred with the condition regarding Tribal involvement in developing mitigation, stating, "We agree with the recommendation for Tribal consultation regarding mitigation for impacts to traditional subsistence and medicinal plant resource areas", (FSEIS, Section 3.3.2.4, Site Significance Evaluations).

In addition, DAHP provided the following recommendations to EFSEC:

- Requested additional photos of historic-period field clearing pile archaeological sites and evidence of tribal consultation, otherwise these resources must be avoided or obtain a DAHP permit prior to any impacts.
- Stated all Revised Project impacts should be avoided to all pre-contact archaeological sites and one historic-period archaeological site and if they can't be avoided, a permit from DAHP is required for formal archaeological testing with recommendations for further mitigation.
- Requested a robust Inadvertent Discovery Plan be developed for the Revised Project and training of construction and operations crews.
- Requested additional archaeological survey for microsites of turbines and for alterations in roadway plans.

In light of the references to the MOU in the FSEIS, and its apparent importance for addressing potential adverse impacts to tribal resources of concern to the Yakama Nation, on September 20, 2018, EFSEC requested a copy of the MOU from Desert Claim. Desert Claim did not provide a copy to EFSEC.

Because the Yakama Nation did not provide comments relative to EFSEC's draft SEPA Addendum, in a letter dated October 17, 2018, EFSEC Siting and Compliance Manager, Sonia E. Bumpus, contacted the Yakama Nation to request that it notify EFSEC of any concerns related to the MOU and/or Desert Claim's SCA amendment request. The Yakama Nation responded to EFSEC and on November 7, 2018 EFSEC staff and the

Yakama Nation held a call to discuss four aspects of their previous agreements with the Certificate Holder and any other concerns related to the amended proposal.

The four areas of agreement entail: 1.) Development of a traditional cultural resources mitigation plan prior to construction; 2.) Access for Yakama Tribal members to the root grounds within the Project area; 3.) Yakama Nation participation on the Technical Advisory Committee (TAC); and 4.) Restoration of lands to pre-Project conditions following decommissioning. This conversation helped to improve EFSEC's understanding of the agreement between Desert Claim and the Yakama Nation and it is expected that Desert Claim's commitments in the FSEIS in conjunction with the new and supplemented mitigation measures in the SCA Amendment, are sufficiently expansive to address the four considerations outlined above.

Recommendations from the Yakama Nation from a 2010 survey of the project area were also discussed during the call. EFSEC staff had previously identified the recommendations during its review of the updated cultural resource assessment prepared by the Certificate Holder's consultant, Archaeological Investigations Northwest, Inc. (AINW), titled, *"Cultural Resource Assessment of Updated Project Design for the Desert Claim Wind Power Project"*. Based on input related to EFSEC during the call, it is EFSEC's understanding that the Yakama Nation's recommendations in the AINW report continue to be topics of concern related to the Revised Project. In consideration of the amended proposal, the input from DAHP and the Certificate Holder, and more recently, the input from the Yakama Nation (11/07/2018), EFSEC staff proposes further revision and clarification to the mitigation to improve the mitigation measure to address cultural resource impacts:

Revised mitigation in the SCA Amendment is recommended:

The development of the Cultural Resources Monitoring and Mitigation Plan must be done in coordination with DAHP and the Yakama Nation and approved by EFSEC. The following must be considered during the plan development:

- Avoidance of the concentrated-resource areas.
- Habitat rehabilitation of impacted-resource area as a means of mitigation for impacts to the diffuse-resource areas.
- Archaeological sites be provided a minimum 30 meter/100 foot buffer.
- Archaeological isolates should be further studied and be provided a minimum 15 meter/50 foot buffer.
- 51 rock features should be re-evaluated and recorded as archaeological sites.
- Archaeological monitoring during construction when ground-disturbing activity is involved.

This mitigation applies to SCA Amendment: ARTICLE IV.H.

15. TRANSPORTATION

- a. Possible impacts to traffic on Smithson Road during construction.

Smithson Road is a new access road, and is the only access road to the Desert Claim project site in the amended SCA. EFSEC reviewed traffic information provided by the Certificate Holder regarding road improvements and traffic on Smithson Road. Based on updated transportation numbers provided by the Certificate Holder, there will be

approximately 558 total turbine delivery trips which represents a 66% decrease in turbine delivery trips over the life of the project. In contrast to the FEIS construction traffic analysis which assumed 7 truck trips for each of the 120 turbines to be delivered to the site, the amended SCA proposal expects that 9 truck trips will be necessary to carry each of the 31 turbines to the amended project site. The Certificate Holder indicated that approximately 22 concrete delivery trips will be made each hour during a daily 12-hour delivery period which represents a 10% increase in concrete trucks per hour during construction from the transportation numbers presented in the FEIS. The estimated increase in concrete trucks per hour during construction is dependent on the concrete production vendor and is not considered a substantial increase.

Access roads will be 1-foot wider on the straight sections than presented in the FEIS from 15 feet to 16 feet wide.

10/10/18 Public Comment from a member of the public regarding concrete truck delivery traffic. The commenter is concerned that “approximately 22 concrete delivery trips will be made each hour during a daily 12-hour delivery period which represents a 10% increase in concrete trucks per hour during construction from the transportation numbers presented in the FEIS. Of course the 10% increase is not considered substantial”. The commenter asked “how long is this daily 12-hour period going to last” and “why is the applicant not making its concrete onsite like most other wind farms?”

Comment Response: Based on the project description provided by the Certificate Holder, project construction would last approximately 9 months. Concrete trucks would travel to the site during a small portion of the construction period. The Certificate Holder estimates an average of 22 concrete truck deliveries per hour (see 09/18/2018 email from Karen McGaffey in the Certificate Holder Responses to Data Request 3). This is based on:

- 2,067 one-way concrete truck trips for all concrete deliveries;
- Approximately two foundations could be poured in one day; and
- Two foundations would require 134 truck trips.

At the rate of 134 delivery truck trips in a day, there would be approximately 15 days of concrete delivery trips.

The proposed SCA Amendment required the submittal of a Construction Traffic Management Plan that addresses increased construction traffic on Smithson Road to limit construction delivery vehicles during peak travel times and to accommodate agricultural road use on Smithson Road. The Construction Traffic Management Plan includes delivery trips, timeframe, duration, and concrete source (including an option for on-site concrete batch plants).

No further mitigation measures are recommended.

Proposed mitigation: Construction Traffic Development Standards.

The Certificate Holder’s Construction Traffic Management Plan should address increased construction traffic on Smithson Road to limit construction delivery vehicles during peak travel times and to accommodate agricultural road use on Smithson Road.

This mitigation applies to SCA Amendment: ARTICLE IV.F.

16. PUBLIC SERVICES

No new or increased adverse environmental impacts to public services are expected from the amended proposal. No mitigation measures recommended.

17. UTILITIES

No new or increased adverse environmental impacts to utilities are expected from the amended proposal. No mitigation measures recommended.

18. ENVIRONMENTAL MONITORING

- a. Possible impacts resulting from removal of the full-time on-site environmental monitor requirement.

The Certificate Holder proposed an amended SCA that deletes the requirement for “full-time on-site” environmental monitoring during the construction phase. The original SCA stipulates full-time on-site environmental monitoring for the construction phase, there is no information indicating why this requirement should be revised to omit “full-time” and “on-site” for this requirement. EFSEC would retain the original language in the SCA requiring “full-time” and “on-site” to ensure environmental compliance throughout the construction phase of the Project.

Proposed mitigation: Environmental Monitoring during Construction

EFSEC will provide full-time on-site environmental monitoring for the construction phase of the Project, at the Certificate Holder’s cost.

This mitigation applies to SCA Amendment: ARTICLE V.A.

C. APPLICABLE SEPA RULES

EFSEC has conducted an environmental analysis of the changes to the proposal following WAC 197-11-600(3)(b) which states:

For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

- (i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or
- (ii) New information indicating a proposal’s probable significant adverse environmental impacts (This includes discovery of misrepresentation or lack of material disclosure). A new threshold determination or SEIS is not required if probably significant adverse environmental impacts are covered by the range of alternatives and impacts analysis in the existing environmental documents.

If EFSEC determines the new information and analysis does not substantially change the analysis of significant impacts and alternatives in the existing environmental document (WAC 197-11-600 (4)(c)), an addendum is appropriate for documenting this review under SEPA.

Nothing in this environmental review or the associated Final SEPA Addendum shall preclude further review or conditioning of future development proposals for the subject property.

I have reviewed and considered the referenced Amended Proposal, the Environmental Checklist, agency comments, public comments and proposed responses, recommended and proposed mitigation, and other available material. I hereby recommend an Addendum to the Desert Claim Wind Power Project Final Supplement EIS issued November 2009.

Sonia E. Bumpus,
EFSEC Siting and Compliance Manager

11/8/2018
Date

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
RESOLUTION NO. 343
AMENDMENT NO. 1 TO THE
DESERT CLAIM WIND POWER PROJECT SITE CERTIFICATION AGREEMENT
RECONFIGURATION OF FACILITY

Nature of Action

On February 26, 2018, the Certificate Holder, Desert Claim Wind Power LLC (Desert Claim), requested that the Energy Facility Site Evaluation Council (EFSEC or the Council) amend its Site Certification Agreement (SCA) to allow for the reconfiguration of its site boundary and the installation of fewer, but larger turbines than originally authorized in the February 2010 SCA.¹ The revised Desert Claim Wind Power proposal (Revised Project) would consist of 25-31 turbines not to exceed 492 feet in height and a total capacity of no more than 100 Megawatts (MW). The current SCA for the original project (Original Project) authorizes Desert Claim to construct and operate up to 95 turbines, with a maximum capacity of 190 MW. The Revised Project remains at the same site as the Original Project, with acreage reduced to 4,400 acres including approximately 370 acres that have been added to the west and south; 1,271 acres have been removed east of Reecer Creek. Primary site access during construction and operation has been changed from Reecer Creek Road to Smithson Road (accessed from Hwy 97). All turbines will be located at least 2,500 feet from all residences in the Revised Project.² A total of 0.347 acres of new permanent wetland impacts and 0.026 acres of permanent stream impacts are identified in the Revised Project. An additional 1.949 acres (0.126 acres stream and 1.823 acres wetland) temporary impacts are proposed to streams and wetlands.³ The Original Project did not contemplate wetland or stream impacts. As a result of reducing the number of turbines and changing the types of turbines to be installed, there is an expected 66% decrease in turbine delivery trips and 10% increase in concrete trucks per hour during construction.⁴

Background

¹ Desert Claim Wind Power LLC, Desert Claim Wind Power Project Site Certification Agreement Amendment Request, (Amend. Req.) Cover Letter, February 26, 2018 at 1.

² Id. at 3

³ EFSEC's Revised State Environmental Policy Act (SEPA) Staff Memorandum to the EFSEC Stephen Posner (Rev. SEPA Staff Memo), EFSEC staff compiled environmental review notes and rationale for proposed mitigation measures to support the SEPA Addendum to the Final Supplemental Environmental Impact Statement (FSEIS), November 1, 2018 at 7.

⁴ Rev. SEPA Staff Memo at 15-16

The Original Project was first reviewed by Kittitas County (the County) in 2005, prior to Desert Claim's application to EFSEC. At that time, the County conducted an environmental review that resulted in preparation of a Final Environmental Impact Statement (FEIS). In April 2005, the County denied the Original Project as it had been proposed. In January 2009, the Original Project was reconfigured and Desert Claim submitted an Application for Site Certification to EFSEC. Under the State Environmental Policy Act (SEPA), EFSEC prepared a Draft Supplemental EIS (DSEIS) and a Final Supplemental EIS (FSEIS) to the County's FEIS. On December 4, 2009 EFSEC transmitted its recommendation of approval for the Original Project to Governor Christine Gregoire. EFSEC's recommendation to the Governor was based on various sources of information including adjudicative proceedings, public comment, and environmental analysis contained in the FSEIS. On February 1, 2010, Governor Christine Gregoire executed on behalf of the State of Washington an SCA authorizing the construction and operation of the Original Project.

The February 2010 SCA for the Original Project authorized Desert Claim to construct and operate a wind power facility consisting of a maximum of 95 wind turbines on tubular steel towers. The 2010 SCA permits an output capacity of 190 total MW and a tower height not to exceed a maximum of 410 feet, within an approximately 5,200 acre project site. The Original Project was located north and west of Ellensburg near the intersection of U.S. Route 97 and Smithson Road. Site access during construction was primarily from Reecer Creek Road. Seven non-participating residences were located between 1,687 and 2,241 feet of one or more turbines. No temporary or permanent stream or wetland impacts were identified during the environmental analysis initially conducted by EFSEC for the Original Project. As a result, measures to address these kinds of impact were not contemplated in the original SCA.

Procedural Status

EFSEC's SCA amendment procedure is governed by chapter 80.50 RCW⁵ and chapter 463-66 WAC⁶.

Desert Claim and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, the request for amendment of the SCA was submitted in writing on February 26, 2018.
- At its monthly meeting of March 20, 2018 the Council determined a schedule for action on the request as follows: April 11, 2018 to conduct a public hearing on the Desert Claim SCA amendment request in Ellensburg, WA.⁷

⁵ RCW (Revised Code of Washington) 80.50

⁶ Title 463 WAC (Washington Administrative Code) Chapter 66

⁷ Verbatim Transcript of EFSEC Monthly Council Meeting, March 20, 2018.

- Pursuant to WAC 463-66-030, notice of a public hearing was distributed to approximately 1,031 people. The public notice issued by EFSEC advised that Desert Claim had requested an amendment to their SCA, and that an informational hearing to consider the matter would be conducted on April 11, 2018. The notice stated that public comments could be made at the April public hearing.
- EFSEC conducted a public hearing session in which the public commented on this matter in Ellensburg, WA on April 11, 2018.⁸
- At the Council's August 21, 2018, monthly meeting EFSEC Siting and Compliance Manager, Sonia Bumpus discussed the status of EFSEC's SEPA review and development of new analysis, such as a visual effects assessment to be completed prior to EFSEC making a determination relative to SEPA.⁹
- At the September 18, 2018 monthly council meeting Sonia Bumpus, on behalf of Stephen Posner, EFSEC's SEPA Responsible Official, proposed that a draft SEPA Addendum to the FSEIS be prepared for the Revised Project. After discussion by the Council and its staff, the Council determined that a 15 day public comment period on the draft SEPA Addendum to the FSEIS would be conducted.¹⁰
- The draft SEPA Addendum, dated September 25, 2018, was prepared and issued for public comment on September 26, 2018 with a deadline for comments on October 10, 2018.
- Three public comment submissions were submitted on the draft SEPA Addendum, EFSEC staff provided a summary of proposed updates to the SEPA addendum and public comments to the Council at the October 16, 2018 monthly Council meeting.¹¹
- The Council considered information in Desert Claim's SCA amendment request, the proposed amendments to the Original Project SCA, input from the public, the Final SEPA Addendum, Revised SEPA Staff Memo, and draft Resolution No. 343 at its November 13, 2018 Council meeting.

⁸ Verbatim Transcript of EFSEC Special Council Meeting, April 11, 2018.

⁹ Verbatim Transcript of EFSEC Monthly Council Meeting, August 21, 2018.

¹⁰ Verbatim Transcript of EFSEC Monthly Council Meeting, September 18, 2018.

¹¹ Verbatim Transcript of EFSEC Monthly Council Meeting, October 16, 2018.

Public Comment

On April 11, 2018, during the public hearing in Ellensburg, WA EFSEC received 10 handwritten comments and 12 oral comments from public speakers. This hearing provided an opportunity for the public to comment on the SCA amendment request submittals and the presentation about the Revised Project provided by Desert Claim.

September 26, 2018 through October 10, 2018 EFSEC conducted a 15-day public comment period on the draft SEPA Addendum to the FSEIS, dated September 25, 2018. EFSEC proposed mitigation measures for potential impacts from the Revised Project. Key environmental review notes and supportive rationale for the proposed mitigation measures were discussed in the SEPA staff memorandum, dated September 25, 2018. The SEPA staff memo was prepared and sent to the EFSEC Manager and SEPA Responsible Official, Stephen Posner. After review, the SEPA Responsible Official made the SEPA Addendum and staff memo available to the Council. The public comment period served as an opportunity for members of the public to comment on the draft SEPA Addendum, SEPA staff memo, and additional and updated studies related to the Revised Project. Concerns raised during the SEPA public comment period included the following:

- Potential water quality impacts to Dry Creek, Green Canyon Creek, Reecer Creek, and Jones Creek for stream heating and bacterial contamination.
- Potential impacts to wetlands and streams.
- Potential impacts from turbine noise- require highest noise standards and monitoring.
- Potential visual impacts from taller turbines, spacing between turbines- visual confusion and disunity.
- Potential impacts from turbine lighting-encourage use of Aircraft Detection Lighting System.
- Cultural Resource- concern from Desert Claim on the proposed mitigation measure and SCA requirement, to adhere to their Memorandum of Understanding (MOU) with the Yakama Nation.
- Potential impacts to transportation during construction associated with concrete truck delivery trips.

The discreet comments listed above are based on EFSEC's technical review of three public comment submissions EFSEC received during the 15-day comment period. Consequently, one of the proposed mitigation measures related to cultural resources was revised in response to comment. Mitigation measures have been finalized and are documented in the Final SEPA Addendum, dated November 1, 2018 (*See attachment 1 to this Resolution*). Final mitigation along with the responses to comments are documented in the Revised SEPA staff memo, dated November 7, 2018 (*See attachment 2 to this Resolution*).

A summary of the comments and EFSEC's responses to comments are also discussed in this resolution below. Each comment is organized under its respective environmental resource area. It is indicated if there are any further revisions suggested for the proposed mitigation measures.

Responses to SEPA Public Comment

Water Quality, Wetlands, and Streams:

Comment: The Washington Department of Ecology (Ecology) commented regarding the protection of impaired waterbodies. In summary, Ecology commented that Dry Creek, Green Canyon Creek, Reecer Creek, and Jones Creek flow through the Revised Project area and are included in the Upper Yakima River Tributaries Temperature Total Maximum Daily Load (TMDL) water quality improvement project. Therefore, these streams must be protected from additional stream heating. The TMDL also recommends that supplementary shade, via installation of new riparian plants, should be added where possible. In addition, the Reecer Creek reach located immediately upstream of the Kittitas Reclamation District canal is included in Washington State's list of 303(d) impaired waterbodies due to high levels of fecal coliform bacteria. Ecology emphasized the importance that planning and construction, and all future use of the site, include water quality protection to avoid further bacterial contamination in Reecer Creek. Ecology noted that a Construction Stormwater General Permit (CSWGP) and the development of a Stormwater Pollution Prevention Plan (SWPPP) will be required for off-site construction stormwater discharges.

Response: The proposed mitigation in the SCA Amendment includes a requirement for coordination with Washington Department of Fish and Wildlife (WDFW) and Ecology regarding finalizing construction and operating plans to avoid or minimize temporary and permanent impacts on streams and wetlands. Prior to construction, a final set of wetland buffers, setbacks, and mitigation standards for permanent and temporary impacts must be determined by EFSEC in consultation with Ecology. The SCA Amendment includes development of a SWPPP, Wetland Compensatory Mitigation Plan, Habitat Mitigation Plan, and Construction Soil Management and Vegetation Plan. These plans will address protection of impaired waterbodies as will the required CSWGP that is required for discharging construction stormwater off-site.¹²

No revision to the mitigation measure in the SCA amendment is proposed.

Noise:

Comment: A member of the public commented regarding the noise monitoring plan. In summary, the comment requested that Desert Claim be held to the strictest standards in its noise monitoring plan.

¹² Rev. SEPA Staff Memo at 6-8

Response: The proposed mitigation in the draft SEPA Addendum includes Complaint-Based Noise Monitoring and Response Plan submittal to EFSEC for review and approval prior to operation to address low frequency noise and aeroacoustic noise.¹³

No revision to the mitigation measure in the SCA amendment is proposed.

Visual:

Comment: A public comment regarding visual impacts of the turbines during operation was received. In summary, the commenter expressed concerns about the “tallest land turbines on earth” being sited next to many homes without EFSEC finding any significant impacts. There were specific concerns regarding visual impacts to residences on Smithson Road, about the variation in size of the turbines, various distances apart from one another, and the use of different turbine models, “causing visual confusion and disunity”.

Response: During EFSEC’s SEPA review of the Revised Project, EFSEC’s consultant determined that from this viewing location, features of the Revised Project would be distinct and would attract viewer attention; however, fewer turbines will be visible than in the previous project configuration in the Original Project.¹⁴

The independent Visual Effects Assessment conducted by EFSEC’s consultant indicated that construction and decommissioning activities and components of the Revised Project would likely be visible to those viewers adjacent to the work sites (e.g. viewers along Smithson Rd. and at nearby residences) with a localized effect that would be experienced for a relatively short duration (weeks to months). The previous visual effects assessment in the FEIS and FSEIS also indicated a moderate level of visual impact related to this general location from the operating turbines.

The technical approach used in the EFSEC’s Visual Effects Assessment (and in previous visual assessments in the FEIS and FSEIS) included dimensions of vividness, intactness, and unity, as well as the degree of visual dominance of the Revised Project, to determine the changes to visual quality. The established Federal Highway Administration definition of ‘unity’ refers to the visual coherence and compositional harmony of the viewshed where effects are evaluated based on the degree to which they disrupt the harmony of the landscape setting. The Visual Effects Assessment (Section 4.1.1) as well as the photos and simulation provided by Truescape (SCA Amendment request, Appendix A – Sheet 8 and Sheet 9) illustrate that the views of the valley from this area are dominated by agricultural development and currently include evident wind projects in the northwest portion of the study area. Based on the existing visual quality and character visible from this area, while distinct, the Revised Project features would not substantially affect the visual unity of the views or be incoherent within the context of the surrounding landscape.

¹³ Rev. SEPA Staff Memo at 10-11

¹⁴ Rev. SEPA Staff Memo at 12-13

No new or increased adverse environmental impacts to visual and aesthetics are expected from the Revised Project.

No mitigation measures in the SCA Amendment is proposed.

Light and Glare: Turbine Lighting:

Comment: A member of the public commented regarding turbine lighting. In summary, the commenter encouraged the use of Aircraft Detection Lighting System (ADLS).

Response: EFSEC's draft SEPA Addendum proposes mitigation for the Revised Project that requires Desert Claim to investigate the application of ADLS (a more recently available technology) prior to construction and report its finding to EFSEC. The report will include the benefits and feasibility of ADLS for the Revised Project proposal.

No new or increased adverse environmental impacts from light and glare due to turbine lighting are expected from the Revised Project.¹⁵

No revision to the mitigation measure in the SCA amendment is proposed.

Historic and Cultural Preservation: Cultural Resources-MOU with Yakama Nation

Comment: EFSEC received a comment from Desert Claim regarding the proposed mitigation measure that requires they adhere to their MOU with the Yakama Nation. In their comment letter Desert Claim clarified that the MOU document is a "Scope of Work" between Desert Claim and the Yakama Nation, the contents of which EFSEC does not know; and that the MOU is not a binding agreement between the two parties. Desert Claim's letter further explained that some of the activities identified in the "Scope of Work" document have already been completed. Desert Claim also expressed concerns about the appropriateness of EFSEC including a requirement that relates to a private document between Desert Claim and the Yakama Nation.

Response: The proposed requirement in the draft SEPA Addendum to adhere to the MOU was developed based on EFSEC's initial SEPA review of the FSEIS and the SCA amendment request materials provided by Desert Claim. For example, the FSEIS discussed additional surveys to be conducted by Desert Claim; it states, "*the Applicant has also agreed to conduct additional surveys of Traditional Cultural Properties (TCP's) of importance to the Yakama Nation and to work with the Yakama Nation to prepare a Traditional Cultural Resources Mitigation Plan.*"

Mitigation measures in the FSEIS included the development of a cultural resource mitigation plan in consultation with the Yakama Nation and the Washington Department of Archaeology and Historic Preservation (DAHP). According to the FSEIS, the plan "*would include mitigation*

¹⁵ Rev. SEPA Staff Memo at 13

*measures tailored to the specific circumstances of each resource and would be consistent with applicable federal, state, and local regulations”.*¹⁶

The Original Project FSEIS also acknowledged the MOU and characterized its intended purpose, that the *“MOU addresses concerns expressed by the Yakama Nation’s comments on the Draft SEIS¹⁷, and provides a framework for developing a Traditional Cultural Resources Mitigation Plan with the Yakama Nation”.*¹⁸

In DAHP’s comments to EFSEC, they concurred with the condition regarding Tribal involvement in developing mitigation for the Revised Project. In its correspondence to EFSEC, DAHP stated, *“We agree with the recommendation for Tribal consultation regarding mitigation for impacts to traditional subsistence and medicinal plant resource areas.”*¹⁹

In addition, DAHP provided the following recommendations to EFSEC:

- Requested additional photos of Historic-period field clearing pile archaeological sites and evidence of tribal consultation, otherwise these resources must be avoided or obtain a DAHP permit prior to any impacts.
- Stated all Revised Project impacts should be avoided to all pre-contact archaeological sites and one historic-period archaeological site and if they can’t be avoided, a permit from DAHP is required for formal archaeological testing with recommendations for further mitigation.
- Requested a robust Inadvertent Discovery Plan be developed for the Revised Project and training of construction and operations crews.
- Requested additional archaeological survey for microsites of turbines and for alterations in roadway plans.

In light of the references to the MOU in the FSEIS, and its apparent importance for addressing potential adverse impacts to tribal resources of concern to the Yakama Nation, on September 20, 2018, EFSEC requested a copy of the MOU from Desert Claim. Desert Claim did not provide a copy to EFSEC.

¹⁶ EFSEC prepared FSEIS, Section 3.3.5, Mitigation Measures.

¹⁷ EFSEC prepared DSEIS, Public Comment Letter #12 from the Yakama Nation in EFSEC prepared FSEIS, Section 4 Draft SEIS Comments and Responses.

¹⁸ EFSEC prepared FSEIS, Section 3.3.2.4, Site Significance Evaluations.

¹⁹ Rev. SEPA Staff Memo at 15

Because the Yakama Nation had not provided public comment to EFSEC relative to the draft SEPA Addendum, in a letter dated October 17, 2018, EFSEC's Siting and Compliance Manager, Sonia E. Bumpus, contacted the Yakama Nation to request that it notify EFSEC of any concerns related to the MOU and/or Desert Claim's SCA amendment request. The Yakama Nation responded to EFSEC and on November 7, 2018 EFSEC staff and the Yakama Nation held a call. The discussion covered four aspects of the Yakama Nation's previous agreements with the Certificate Holder and other concerns related to the Revised Project.

The four aspects discussed included: 1.) Development of a traditional cultural resources mitigation plan prior to construction; 2.) Access for Yakama Tribal members to the root grounds within the Project area; 3.) Yakama Nation participation on the Technical Advisory Committee (TAC); and 4.) Restoration of lands to pre-Project conditions following decommissioning.

This conversation helped to improve EFSEC's understanding of the agreement between Desert Claim and the Yakama Nation and it is expected that Desert Claim's commitments in the FSEIS in conjunction with the new and supplemented mitigation measures in the SCA Amendment, are sufficiently expansive to address the four considerations outlined above.²⁰

Recommendations from the Yakama Nation from a 2010 survey of the project area were also discussed during the call. EFSEC staff had previously identified the recommendations during its review of the updated cultural resource assessment prepared by the Certificate Holder's consultant, Archaeological Investigations Northwest, Inc. (AINW), titled, "*Cultural Resource Assessment of Updated Project Design for the Desert Claim Wind Power Project*". Based on input related to EFSEC during the call, it is EFSEC's understanding that the Yakama Nation's recommendations in the AINW report continue to be topics of concern related to the Revised Project. In consideration of the SCA Amendment request, input from DAHP and Desert Claim, and more recently, input from the Yakama Nation, EFSEC staff proposes further revision and clarification to the mitigation initially proposed to improve the mitigation measure to address cultural resource impacts:

Revised mitigation in the SCA amendment is proposed:²¹

The development of the Cultural Resources Monitoring and Mitigation Plan must be done in coordination with DAHP and the Yakama Nation and approved by EFSEC. The following must be considered during the plan development:

- Avoidance of the concentrated-resource areas.
- Habitat rehabilitation of impacted-resource area as a means of mitigation for impacts to the diffuse-resource areas.

²⁰ Rev. SEPA Staff Memo at 16

²¹ Rev. SEPA Staff Memo at 14-16

- Archaeological sites be provided a minimum 30 meter/100 foot buffer.
- Archaeological isolates should be further studied and be provided a minimum 15 meter/50 foot buffer.
- 51 rock features should be re-evaluated and recorded as archaeological sites.
- Archaeological monitoring during construction when ground-disturbing activity is involved.

Transportation: Traffic Impacts during Construction

Comment: A public comment was submitted regarding concerns about concrete truck delivery traffic. In summary, the commenter expressed concerns that, *"approximately 22 concrete delivery trips will be made each hour during a daily 12-hour delivery period which represents a 10% increase in concrete trucks per hour during construction from the transportation numbers presented in the FEIS. Of course the 10% increase is not considered substantial"*. While the commenter seems to acknowledge that the expected 10% increase is not substantial, the commenter asks, *"how long is this daily 12-hour period going to last"* and *"why is the applicant not making its concrete onsite like most other wind farms?"*

Response: Based on the Revised Project description provided by Desert Claim, construction is expected to last approximately 9 months. Concrete trucks would travel to the site during a small portion of the construction period. Desert Claim estimates an average of 22 concrete truck deliveries per hour (see 09/18/2018 email, Desert Claim response to Data Request 3). This is based on:

- 2,067 one-way concrete truck trips for all concrete deliveries;
- Approximately two foundations could be poured in one day; and
- Two foundations would require 134 truck trips- At the rate of 134 delivery truck trips in a day, there would be approximately 15 days of concrete delivery trips.

The draft SEPA Addendum proposed mitigation requiring the submittal of a Construction Traffic Management Plan that would address increased construction traffic on Smithson Road, which is a new access road for the Revised Project. The Construction Traffic Management Plan would address issues such as limiting construction delivery vehicles during peak travel times and accommodating agricultural road use on Smithson Road. The Construction Traffic Management Plan would contain detailed traffic information which would address concerns raised by the commenter. Details about project delivery trips, timeframe, duration and the concrete source would be among the project elements required in the plan (including an option for on-site concrete batch plant).

No revision to the mitigation measure in the SCA amendment is proposed.

Discussion

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend a SCA:

In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare; and
4. The provisions of chapter 463-72 WAC.

1. Consistency with intention of the original SCA

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the original SCA.²² In general, the intention of every SCA is to grant state authorization to a certificate holder to construct and operate an energy facility that has been determined to be in the interest of the State of Washington because the facility will produce a net benefit after balancing need for the facility against impacts on the broad public interest, including human welfare and environmental stewardship.²³ During its initial siting decision of the Original Project, the Council relied upon its overarching policy and intent in RCW 80.50.010. EFSEC Council Order No. 843, Order Recommending Approval of Site Certification Agreement, states *“The Council has carefully considered the state’s need for energy at reasonable cost and the need to minimize environmental impacts.”*²⁴ The Council determined that the Original Project would, *“provide the region with significant energy benefits while not resulting in unmitigated, significant adverse environmental impacts. Thus, the proposed Project meets the requirements of applicable law and is consistent with the policy and intent of RCW 80.50.”*

In reviewing the SCA amendment request, the Council focused on understanding the proposed changes to the Original Project and any associated impacts identified through its SEPA review. The Council assessed the modified project in conjunction with whether or not the terms and conditions in the SCA Amendment would sufficiently protect *“the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life”* in light of those changes.²⁵ The result of EFSEC’s SEPA review indicates the Revised Project will primarily reduce adverse environmental impacts, in comparison to the Original Project. Consistency and compliance with SEPA is discussed in subsection (2) (A) below. The SEPA environmental review also indicates that the Revised Project will meet applicable construction and operation standards for energy facilities, as outlined in WAC 463-62.²⁶ Consistency with WAC 463-62 is discussed in Subsection (2) (C) below.

²² WAC 463-66-040

²³ Tesoro Savage Vancouver Energy Distribution Terminal, Report to the Governor on Application No. 2013-01, Executive Summary, at 4.

²⁴ EFSEC Council Order No. 843, Order Recommending Approval of Site Certification Agreement for Desert Claim Original Project.

²⁵ RCW 80.50.010

²⁶ Chapter 463-62 WAC outlines EFSEC’s Construction and Operation Standards for Energy Facilities under EFSEC’s jurisdiction. Performance standards and mitigation requirements are included for: Seismicity, Noise standards, Fish and wildlife, Impact and mitigation standards for wetlands, Water quality, and Air quality.

As detailed in the Final SEPA Addendum and Revised staff memo, the Revised Project reconfiguration will not result in potential significant adverse impacts to the natural environment of the site and all adverse impacts that have been identified will be avoided or mitigated, see also subsection (3) below. Mitigation measures included in the SCA Amendment address adverse impacts to Water Resources-Water quality, Environmental health, Noise, Light and Glare, Historic and Cultural Preservation, Transportation, and Environmental monitoring.

The majority of environmental impacts addressed within the FSEIS and in the Final SEPA Addendum are similar and by comparison, most resource impacts identified for the Original and Revised Project have not substantively changed. However, impacts to wetlands and streams were not contemplated as part of the Original Project. In light of these new impacts, Desert Claim is required to comply with the mitigation standards for impacted wetlands, as outlined in WAC 463-62-050.²⁷ The Final SEPA Addendum and Revised SEPA staff memo (Attachments 1 and 2) identify specific mitigation which requires Desert Claim to coordinate, *“with WDFW and Ecology regarding finalizing construction and operating plans to avoid or minimize temporary and permanent impacts on streams and wetlands. Prior to construction a final set of wetland buffers, setbacks, and mitigation standards for permanent and temporary impacts must be determined by EFSEC in consultation with Ecology.”* Additionally, Desert Claim is required to develop a Temporary Erosion and Sediment Control Plan (TESC), Stormwater Pollution Prevention Plan (SWPPP), Wetland Compensatory Mitigation Plan, Habitat Mitigation Plan, and Construction Soil Management and Vegetation Plan. These plans are expected to address protection of impaired waterbodies as will the Construction Stormwater General Permit (CSWGP), which is required for discharging construction stormwater off-site.²⁸

The Council carefully considered the results of the new and updated analyses conducted under SEPA, the proposed mitigation measures in the Final SEPA Addendum and Revised SEPA staff memo, and construction and operational aspects of the Revised Project. The Council determines that the Revised Project meets the requirements of applicable law and is consistent with the policy and intent of RCW 80.50. The Council finds that within the terms of the SCA amendment, which includes the mitigation measures discussed above and below, the Revised Project will not result in unmitigated significant adverse impacts to the environment, the ecology of the land and its wildlife, and the ecology of the state waters and their aquatic life. None of the proposed facility modifications for the Revised Project or the respective SCA amendment terms and conditions effect the Council’s previous determination of approval, with respect to “significant energy benefits” the facility is expected to provide to the region, or to the “state’s need for energy at reasonable cost.”²⁹

²⁷ Chapter 463-62-050 WAC outlines EFSEC’s construction and operation standards for impacts and mitigation standards for wetlands.

²⁸ Rev. SEPA Staff Memo at 6-8

²⁹ EFSEC Council Order No. 843, Order Recommending Approval of Site Certification Agreement for Desert Claim Original Project.

2. Consistency with applicable laws and rules

Under WAC 463-66-040(2), the Council must consider applicable laws and rules, including chapter 80.50 RCW, chapter 43.21C RCW and chapter 197-11 WAC (the State Environmental Policy Act and SEPA rules)³⁰, WAC 463-66-070 through -080, and the construction and operation standards for energy facilities in WAC 463-62³¹.

A. Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC).

The Council is charged with the responsibility to review proposed projects under SEPA, RCW 43.21C and chapter 197-11 WAC. That law provides for the consideration of probable adverse environmental impacts and possible mitigation measures. Pursuant to WAC 463-47-140, EFSEC is the lead agency for environmental review of projects under the jurisdiction of RCW 80.50; the Council Manager is the SEPA responsible official, per WAC 463-47-051.

Desert Claim submitted a SEPA Checklist which EFSEC staff reviewed along with the other materials submitted to EFSEC. The Council invited public comment on the SCA amendment request at a public hearing conducted in April 2018³² in Ellensburg, WA. While the hearing is not required under SEPA rules, the preliminary concerns expressed by the public at the hearing were taken into account by EFSEC staff during the environmental review of the SCA amendment. Concurrently, EFSEC gathered input from other coordinating agencies. Key notes about the environmental resources analyzed and their respective mitigation are documented in the Revised SEPA staff memo, dated November 7, 2018 (See attachment 1 to this Resolution). While no new significant adverse impacts for the Revised Project were identified, EFSEC developed supplemental mitigation measures to address adverse impacts concerning water resources-water quality, wetlands and streams, riparian areas, noise, light and glare, and historic and cultural resources, transportation, and environmental monitoring.

Though not required by SEPA, the Council conducted a 15-day public comment period on the draft SEPA Addendum that included the supporting draft SEPA staff memo. This provided the public with an opportunity to comment on the Revised Project, proposed mitigation measures, and associated reports for the SCA Amendment request. Three public comment submissions were received and considered by EFSEC to finalize mitigation measures. Summarized public comments and responses to comments are discussed in detail in the Revised SEPA staff memo and final mitigation measures are documented in the Final SEPA Addendum. In response to

³⁰ Title 197 WAC (Washington Administrative Code) Chapter 11

³¹ Chapter 463-62 WAC EFSEC's Construction and Operation Standards for Energy Facilities under EFSEC's jurisdiction.

³² Chapter 463-66-030 WAC requires the Council to hold one or more public hearing sessions upon the request for Amendment to an SCA. The Council conducted a public hearing for Desert Claim's SCA Amendment request on April 11, 2018.

comments, EFSEC further revised the mitigation measure requirement concerning historic and cultural resources, which now requires Desert Claim to develop their Cultural Resource and Mitigation Plan in consultation with the Yakama Nation and DAHP.³³ Based on input EFSEC received from the Yakama Nation, EFSEC revised the mitigation measure to improve and clarify which tribal concerns must be considered during Desert Claim's plan development.

In general, SEPA requires an agency to perform a threshold determination to determine whether a proposed action will have a significant adverse effect on the environment (See WAC 197-11-310). For Desert Claim's SCA amendment request for the Revised Project, EFSEC has conducted an environmental analysis of the changes to the proposal following WAC 197-11-600(3)(b) which states:

For Determinations of Nonsignificance (DNSs) and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

- (i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or
- (ii) New information indicating a proposal's probable significant adverse environmental impacts (this includes discovery of misrepresentation or lack of material disclosure). A new threshold determination or SEIS is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analysis in the existing environmental documents.

If EFSEC's SEPA Responsible Official determines that the new information and analysis does not substantially change the analysis of significant impacts and alternatives in the existing environmental document (WAC 197-11-600 (4)(c)), an addendum is appropriate for documenting this review under SEPA.

The Council's SEPA Responsible Official, Stephen Posner, reviewed and considered the Revised Project and the SCA Amendment request from Desert Claim, submitted on February 26, 2018. The SEPA Responsible Official published the draft SEPA Addendum to the FSEIS for a 15-day public comment period on September 26, 2018. The SEPA Responsible Official considered several sources of information to make a determination with respect to SEPA. Public comments, new information and updated analyses provided by Desert Claim and EFSEC's consultant, EFSEC staff recommendations for proposed mitigation in the draft and revised SEPA staff memo, were all considered by EFSEC's SEPA Responsible Official in order to develop the Final SEPA Addendum, dated November 1, 2018. The SEPA Responsible Official determined that the Revised Project will not result in significant adverse impacts to the natural environment. The Council hereby accepts the determination and acknowledges the measures to be implemented by Desert Claim to modify the Project proposal to further avoid, minimize and mitigate

³³ Rev. SEPA Staff Memo 14-16

environmental impacts. As described in the preceding SEPA section, the Council took several steps to finalize the SEPA Addendum and comply with SEPA requirements. The Council finds that the Revised Project is consistent and in compliance with chapter 43.21C RCW and chapter 197-11 WAC.

B. Consistency with WAC 463-66-070: Approval by Council Action and -080: Approval by governor.

WAC 463-66-070 and -080 discuss the two options available to the Council for approval of a request for amendment to an EFSEC site certification agreement.

WAC 463-66-080 provides:

“An [SCA] amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor.”

On the other hand, WAC 463-66-070 provides:

“An amendment request which does not substantially alter the substance of any provisions of the SCA, or which is determined not to have a significant detrimental effect upon the environment, shall be effective upon approval by the council. Such approval may be in the form of a council resolution.”

The Council examined the Revised Project and the revisions to the SCA Amendment request in consideration of whether provisions in the Original Project SCA would be substantially altered. The Original Project is discussed in more detail in the Background discussion above. The Project Description in Article I, Part C of the SCA Amendment has been updated to reflect the changes to the project description and describes modifications such as the installation of taller but fewer turbines. The remaining revisions are primarily associated with the updates and revisions to mitigation formed through SEPA.

The Council considered whether the SCA Amendment request would result in, “*significant detrimental effects*” on the environment. EFSEC relied upon its SEPA review to identify potential significant adverse impacts. If potential significant unavoidable adverse impacts were identified, these would be categorically characterized as “*significant detrimental effects*”. The SEPA Addendum and SEPA staff memo indicate that no significant unavoidable adverse impacts have been identified. New or revised mitigation in the SCA Amendment will adequately addresses impacts for Water resources-water quality, Environmental health, Noise, Light and Glare, Historic and Cultural Preservation, Transportation, and Environmental monitoring. The Council acknowledges that impacts to wetlands and streams were not contemplated or analyzed for the Original Project; however, new mitigation measures have been developed and added to the SCA amendment to address those impacts. Additionally, the requirement for a full-time, onsite environmental monitor is also retained as a condition in the SCA amendment, which will provide further protection for any unanticipated impacts to wetland and streams should any arise during construction.

EFSEC's SEPA review supports the conclusion that the Revised Project will not result in significant detrimental effects as no significant unavoidable adverse impacts to the environment have been identified. Final mitigation measures have been incorporated into the SCA Amendment as terms and conditions appropriate for the Revised Project. Owing to the modifications of the Revised Project combined with the fact that none of the modifications result in significant unavoidable adverse environmental effects, the Council determines that the SCA Amendment does not substantially alter the substance of any provisions of the SCA. The Council finds that the majority of provisions in the SCA for the Original Project remain substantively unchanged, recognizing that some conditions have been supplemented with additional or more refined measures (See Revised SEPA Staff Memo). The Council therefore concludes that this amendment may be approved by Council resolution pursuant to WAC 463-66-070.

C. Consistency with WAC 463-62 Construction and Operation Stands for Energy Facilities.

The purpose of chapter 463-62 WAC implements EFSEC's policy and intent outlined in RCW 80.50.010. Performance standards and mitigation requirements which address seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality are identified in the rule. Within the terms and conditions of the SCA amendment, the Revised Project demonstrates compliance with the construction and operation conditions outlined in WAC 463-62. The Revised Project changes relative to these requirements are detailed in the revised SEPA staff memo and Final SEPA Addendum.

Seismicity:

While seismicity issues are not anticipated for the Revised Project, final facility design plans are required for the Revised Project prior to start of construction.

Noise:

Noise modeling for the Revised Project indicated no exceedances of noise standards.

Fish and wildlife habitat and function:

Fish and wildlife habitat and function are addressed through mitigation measures in the SCA amendment. The SCA amendment will require Desert Claim to coordinate with Ecology and WDFW regarding the finalization of construction and operation plans to avoid and minimize temporary and permanent impacts to streams and wetlands. A Wetland Compensatory Mitigation Plan and Habitat Management Plan are also required.

Wetland Impacts and mitigation:

Ecology and EFSEC reviewed the May 2018 Wetland Delineation and Analysis Report submitted by Desert Claim. As discussed in the Revised SEPA staff memo, permanent impacts to approximately 0.026 acres associated with 13 streams and 0.347 acres associated with 8 wetlands are anticipated from the Revised Project. Desert Claim proposes to conduct required mitigation by enhancing three onsite wetlands and final mitigation would be developed to fully mitigate for any permanent impacts identified, and for the size of buffers based on Best Available Science (BAS). Wetland enhancement may include removing existing cattle grazing uses, installing exclusion fencing, and planting bare areas with plug sized herbaceous vegetation. EFSEC and Ecology also reviewed the credit/debit analysis proposed by Desert Claim and

concluded there would be “no net loss” of wetland function within the project area with proposed mitigation.

Water Quality:

Desert Claim is required to obtain a Construction Stormwater General Permit. This permit is a regulatory requirement as part of the SCA. Desert Claim is required to comply with the permit to protect water quality during construction activities. In addition to the permit, Desert Claim is required to prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) which is required for off-site construction stormwater discharges.

Air Quality:

No air emissions are anticipated nor are any air permits required to construct and operate the Revised Project.

Based on the results of the SEPA environmental review conducted by EFSEC and within the terms of the SCA amendment, the Council hereby concludes that the standards for construction and operation in chapter 463-62 WAC are satisfied. Therefore, the Council determines that the ore the Revised Project is consistent with WAC 463-62.

3. Consistency with the public health, safety, and welfare

Under WAC 463-66-040(3) and -050, the Council must consider whether the SCA Amendment request would be consistent with public health, safety, and welfare. In considering whether a proposed amendment is consistent with the public health, safety and welfare, WAC 463-66-050 requires the Council to consider the long-term environmental impacts of the proposal, and further requires a consideration of “*reasonable alternative means by which the purpose of the proposal might be achieved*” along with the “*availability of funding to implement the proposal.*”

A. Public health, safety and welfare:

The majority of activities associated with the installation and operation of the Revised Project will be conducted in the area approved for the Original Project. The Original Project area previously analyzed in EFSEC’s FSEIS has been reduced for the Revised Project with the removal of the 1,271 acres east of Reecer Creek, with wind turbines no longer to be installed in this area. To the West and South of the site of the Original Project, the Revised Project adds 370 acres to the total Project area. Consequently, the overall permanent footprint for the Revised Project has been reduced in comparison to the footprint of the Original Project.³⁴ The Revised Project also reduces the number of turbines originally permitted from 95 to no more than 31. For the 31 turbines to be installed, the maximum height of the turbines increased from 410 feet (ft.) to a max height of 492 ft. The distance between the turbines and residences originally permitted for the Original Project has been increased and turbines in the Revised Project will no longer be located within 2,500 feet of any residence.

³⁴ Amend. Req. at 6.

Due to the reconfiguration of the turbines and increased turbine height, EFSEC's consultant conducted an independent Visual Effects Assessment to determine impacts to visual and aesthetics. The assessment considered factors such as the reconfiguration design, the reduced number of turbines to be installed, and the increased height of the turbines. The results of the assessment indicated no significant impacts to visual and aesthetics.

Noise modeling for the Revised Project was conducted which does not show any exceedances of noise standards; however, the SCA conditions have been supplemented to include a new requirement for a complaint-based noise monitoring and response plan, the intent is to address noise complaints should any arise during facility operations.³⁵

Mitigation measures to address shadow flicker were retained for the Revised Project. While additional mitigation measures have been developed to address certain aspects of the Revised Project, none of these changes substantially alter the substance of the SCA or result in any significant or new detrimental effects on the public health, safety or welfare. The Revised Project continues to implement the purpose of the Original Project, though with a smaller energy output, to address the pressing need for energy facilities, and will provide additional abundant affordable renewable power. The Revised Project will not have potential significant adverse impacts on public health and safety. Consequently, as supported by the documentation in the Final SEPA Addendum and the Amended SCA, the Revised Project is consistent with the public health, safety and welfare.

B. Environmental impacts:

Environmental impacts related to public health, safety and welfare have been addressed either in the FSEIS or in the Final SEPA Addendum. For the reasons set forth above and below related to SEPA compliance and EFSEC's environmental review, the Revised Project will not result in significant unavoidable adverse environmental impacts. Desert Claim will continue to abide by all the terms and conditions of the Amended SCA.

EFSEC's SEPA review relied on the FSEIS analysis combined with information gathered for the Final SEPA Addendum. The FSEIS analyzed impacts to water resources and water quality, plants and animals, historic and cultural resources, visual and aesthetics, environmental health, and transportation. For water resources, Desert Claim is required to obtain a Construction Stormwater General Permit (CSWGP). This permit is a regulatory requirement and is part of the SCA approval. Desert Claim is required to comply with the permit to protect water quality during construction activities.

For new impacts to wetlands and streams, which were not previously analyzed for the Original Project, the SCA amendment requires Desert Claim to coordinate with Ecology and WDFW agencies regarding the finalization of construction and operation plans to further avoid and minimize temporary and permanent impacts to streams and wetlands. A Wetland Compensatory

³⁵ Rev. SEPA Staff Memo at 10-11.

Mitigation Plan and Habitat Management Plan are also required.³⁶ Ecology and EFSEC reviewed the May 2018 Wetland Delineation and Analysis Report submitted by Desert Claim. As discussed in the Revised SEPA staff memo, permanent impacts to approximately 0.026 acres associated with 13 streams and 0.347 acres associated with 8 wetlands are anticipated from the Revised Project. Desert Claim proposes to conduct required mitigation by enhancing three onsite wetlands and final mitigation would be developed to fully mitigate for any permanent impacts identified, and for the size of buffers based on Best Available Science (BAS). Wetland enhancement may include removing existing cattle grazing uses, installing exclusion fencing, and planting bare areas with plug sized herbaceous vegetation. EFSEC and Ecology also reviewed the credit/debit analysis proposed by Desert Claim and concluded there would be “no net loss” of wetland function within the project area with proposed mitigation.³⁷

To determine impacts to visual and aesthetics due to installation of fewer but taller turbines, EFSEC conducted an independent effects assessment.³⁸ That assessment determined that no new or increased adverse environmental impacts to visual and aesthetics are expected. Furthermore, mitigation for shadow flicker from the wind turbines remains in the SCA amendment to address potential issues should any arise during operation. The Revised Project is not expected to have short-term or long-term significant adverse impacts to the environment, consequently, as documented in the SEPA Addendum and the Amended SCA, the proposed amendment is consistent with the public health, safety and welfare.

C. Reasonable alternatives means to achieve the purpose of the proposal; Funding to implement the proposal:

Alternatives to the Original Project as it was presented to the County were considered in the FEIS. The Revised Project does not change those considerations and related findings and conclusions. Desert Claim has conducted environmental surveys over the course of reconfiguring its proposal, consequently it is uniquely familiar with the terrain and habitat of the site where the Revised Project is to be located. Desert Claim intends to lease 2,625.8 acres from four private land owners, with 636.7 acres leased from the Washington Department of Natural Resources, and 1,130.5 acres owned by an affiliate of Desert Claim.³⁹ Five Bonneville Power Administration (BPA) owned transmission lines and Puget Sound Energy’s Rocky Reach-Cascade 230 Kilovolt (kV) line are located in the Revised Project area. According to Desert Claim, these regional transmission lines have been identified as options for interconnecting the

³⁶ Amend. SCA, Article IV.E.

³⁷ Ecology letter to EFSEC, dated September 07, 2018.

³⁸ Golder Associates, Inc. Visual Effects Assessment for Desert Claim Wind Power Project, dated September 7, 2018.

³⁹ Amend. Req., Revised Project description, Section 2.3 Land Ownership at 36.

Revised Project to the regional transmission network.⁴⁰ Due to the unique ability of Desert Claim to develop the Revised Project area and its location that provides access for transmission interconnection, the Council finds there is no reasonable alternative means to efficiently achieve the objectives of the amended proposal—the production of renewable energy available to Desert Claim on the Revised Project site. Based on Desert Claim’s written request that EFSEC amend its SCA, the Council concludes that Desert Claim has the capability to fund and complete the construction of the amended Project reconfiguration.

4. Consistency with WAC 463-72

WAC 463-72-020 provides:

Site restoration or preservation plans shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues, to include provisions for funding or bonding and monitoring. Specific plans shall:

(1) Describe the process and/or assumptions used to evaluate the options considered and the measures selected to restore or preserve the site to protect the environment and all segments of the public against risks and dangers resulting from the site operations and activities.

(2) Address provisions for funding or bonding to meet restoration or preservation costs. Financial assurance shall be provided to ensure that funding is available and sufficient for site restoration or preservation. Such financial assurances shall include evidence of pollution liability insurance coverage in an amount justified for the project, and a site closure bond, sinking fund, or other financial instrument or security in an amount justified in the initial site restoration plan.

(3) Address the scope of monitoring to be conducted during site restoration or preservation and possible continued monitoring to ensure site restoration is achieved.

Compliance with WAC 463-72 is addressed in the SCA amendment under site restoration, which requires Desert Claim to develop and prepare an Initial Site Restoration Plan (ISRP) in consultation with WDFW, and to submit the plan for EFSEC approval.⁴¹ The objective of the ISRP is to conduct restoration of the site to “approximate pre-Project condition or better”.⁴² Based on its previous findings that the proposed amendment has no significant adverse environmental impacts and no significant adverse impacts on public health, safety, and welfare; and second, that it does not

⁴⁰ Amend. Req., Revised Project description, Section 3.2.3 Transmission Interconnections at 10.

⁴¹ Amended SCA, Article III. H Site Restoration at 10.

⁴² Amended SCA, Article IV.D Initial Site Restoration Plan at 14.

substantially alter the substance of Desert Claim's legal responsibilities under the SCA, the Council concludes that this amendment is consistent pursuant to WAC 463-72.

Conclusion

The Council concludes as follows: (1) the proposed SCA Amendment is consistent with the intent of the Original Project SCA; (2) the proposed SCA Amendment of Desert Claim's SCA to allow reconfiguration of the Project as-proposed is consistent with the public health, safety, and welfare; (3) the proposed SCA Amendment is consistent with all applicable laws (including SEPA); and (4) the proposed amendment is consistent with the purpose pursuant to WAC 463-72. The Council hereby determines that it is appropriate to approve Amendment 1 to the Desert Claim Wind Power Project SCA, necessary to reflect the proposed changes to the Project; *Provided*, Desert Claim Wind Power LLC, shall continue to implement mitigation measures identified in the SCA, as amended by this decision.

RESOLUTION

For the foregoing reasons, the Council grants Desert Claim's request to amend its SCA to allow Desert Claim to construct and operate the Revised Project. The Council's approval is memorialized in the attached SCA Amendment.

- The proposed amendment to the SCA for the reconfiguration of the Project and its boundaries, reducing the Project area to approximately 4,400 acres, by removal of 1,271 acres located east of Reecer Creek and the addition of approximately 370 acres to the west and south of the Project area.
- Primary site access during construction and operation will be changed to Smithson Road, for internal access roads.
- The Project will include approximately twenty (20) miles of internal roads for access to the wind turbine generators and other Project facilities.
- Installation of wind turbine generators for a maximum of thirty-one (31), 3-bladed wind turbines on tubular steel towers, not to exceed a maximum height (hub height plus blade tip height) of 150 meters (492 feet), with a capacity ranging from 2.0 to 4.2 megawatts (MW). The total capacity for the reconfigured Project will not exceed 100 MW. Wind turbines will be equipped with turbine control, safety and braking systems, and will be interconnected to a central Supervisory Control and Data Acquisition (SCADA) system.
- Turbine setbacks shall meet the following setback requirements:
 - Setback from occupied residences = 2,500 feet
 - Setback from external Project Area boundaries = 1.25 x tip height
 - Setback from road and transmission line rights of way = 1.25 x tip height
 - Setback from barns and buildings = tip height
- All applicable SCA conditions and mitigation measures apply to the construction and operation of the Facility. Desert Claim Wind Power LLC, shall comply with all additional mitigation measures as set forth in the SCA, as amended.
- The SCA changes are shown in the Amended SCA.
- The mitigation measures and supporting SEPA review notes are set out in attachment 1 and attachment 2 to this resolution.

Appeals:

A request for judicial review of the SCA amendment for the Revised Project is subject to the requirements of the Administrative Procedures Act, Chapter 34.05 RCW.

DATED at Olympia, Washington and effective on November ___, 2018

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By:

Attested:

Kathleen Drew, EFSEC Chair

Stephen Posner, EFSEC Manager

Attachments: 1. EFSEC SEPA Addendum to the FSEIS

2. EFSEC SEPA revised staff memorandum to Stephen Posner

**SITE CERTIFICATION AGREEMENT BETWEEN
THE STATE OF WASHINGTON AND
DESERT CLAIM WIND POWER LLC**



**For the
DESERT CLAIM WIND POWER PROJECT
KITITAS COUNTY, WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL
OLYMPIA, WASHINGTON**

EXECUTED FEBRUARY 1, 2010

**Amendment No. 1: Resolution No. 343
November 13, 2018**

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Attachments

1. **Project Legal Description**
2. Council Order No. 843, Order Recommending Approval of Site Certification on Condition entered November 16, 2009.
3. Stipulation between Counsel for the Environment and Desert Claim Wind Power LLC, Exhibit 30 in the adjudicative proceeding.
4. Agreement between Washington Department of Fish and Wildlife (WDFW) and Desert Claim Wind Power LLC, Exhibit 20 in the adjudicative proceeding.
5. Council Resolution No. 343, approval of the February 26, 2018 SCA Amendment Request.

**SITE CERTIFICATION AGREEMENT
FOR THE DESERT CLAIM WIND POWER PROJECT**

between

THE STATE OF WASHINGTON

and

DESERT CLAIM WIND POWER LLC.

This Site Certification Agreement (Agreement) is made pursuant to Revised Code of Washington (RCW) 80.50, by and between the State of Washington, acting by and through the Governor of Washington State, and Desert Claim Wind Power LLC, (Desert Claim or Certificate Holder).

Desert Claim 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 2006-02, conducted public meetings and adjudicative hearings, and by order recommended approval of the application by the Governor. On February 2, 2010, the Governor approved the Site Certification Agreement (SCA) authorizing Desert Claim to construct and operate the Desert Claim Wind Power Project (Project). A request for Amendment to the SCA was submitted to EFSEC on February 26, 2018 (Amendment Request).¹ On November 13, 2018, the Council approved Amendment No. 1 by resolution No. 343 (Attachment 5).

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

The site on which the Desert Claim Wind Power 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.

¹ The original Desert Claim proposal was first reviewed by Kittitas County (the County) in 2005, prior to Desert Claim's application to EFSEC. At that time, the County conducted an environmental review that resulted in preparation of a Final Environmental Impact Statement (FEIS). In April 2005, the County denied the project as it had been proposed. In January 2009, the project was reconfigured and Desert Claim submitted a revised application (Revised Application) for Site Certification to EFSEC. On February 2, 2010 the Revised Project was approved. An SCA Amendment request was submitted to EFSEC on February 26, 2018 to further revise the project.

B. Site Certification

The State of Washington hereby authorizes Desert Claim Wind Power LLC (Desert Claim or Certificate Holder), any and all parent companies, and any and all assignees or successors approved by the Council to construct and/or operate the Project, as described in Article I.A. of this Agreement, subject to the terms and conditions set forth in Council Order No. 843, Council Order Recommending Site Certification on Condition (Attachment 2 to this Agreement), Council Resolution No. 343, and this Site Certification Agreement.

The construction and operation authorized in this Agreement shall be located within the areas designated herein and in the Amendment Request.

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 Amendment No. 1 is approved by the Council; 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.K of this Agreement demonstrates its intention and good faith basis to believe that construction shall be completed within eighteen (18) months of beginning Construction.

The Certificate Holder may begin Commercial Operation of some wind turbine generators prior to completing construction of all wind turbine generators and other Project components, provided all necessary Project elements are in place for safe operation of the completed wind turbine generators and their operation will not adversely affect any obligations under this Agreement.

C. Project Description

The Desert Claim Wind Power Project will consist of: wind turbine generators (WTGs); 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; temporary construction-related facilities; other related Project facilities as described in the Amendment Request.

The location of Project facilities including, but not limited to, the turbines, roadways, electrical collection and distribution system, operations and maintenance facility, electrical substations, electrical feeder lines and other related Project facilities, is generally described in the Amendment Request. The final location of the WTGs and other project facilities within the Project Area may vary from the locations shown on the conceptual drawings in the Amendment Request, but shall be consistent with the conditions of this Agreement and in accordance with the final construction plans approved by EFSEC pursuant to Article IV. L.

1. Wind Turbine Generators (WTGs). The Project shall consist of a maximum of thirty-one (31), 3-bladed wind turbines on tubular steel towers, not to exceed a maximum height (hub height plus blade tip height) of 150 meters (492 feet), with a capacity ranging from 2.0 to 4.2 megawatts (MW). The total capacity for the project will not exceed 100 MW.

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.

2. Meteorological Towers. The Project will include up to four (4) free-standing (non-guyed) permanent meteorological towers. The height of the meteorological towers shall not exceed the hub height of the WTGs selected.
3. Internal Access Roads. The Project will include approximately twenty (20) miles of internal roads 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 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) or the Bonneville Power Administration (BPA) high voltage transmission lines through a Project step-up substation. The step-up substation would connect to the respective PSE 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 Maintenance Facility.
 - a) The Operations and Maintenance (O&M) facility will include a main building with offices, restrooms, 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 four (4) acres.
 - b) The O&M facility will include a permit-exempt well (withdrawing less than 5,000 gallons of water per day) for water supply. Sanitary wastewater from the maintenance facility will be discharged to an on-site septic system.
6. Turbine Setbacks.

Turbines shall meet the following setback requirements:

 - Setback from occupied residences = 2,500 feet
 - Setback from external Project Area boundaries = 1.25 x tip height
 - Setback from road and transmission line rights of way = 1.25 x tip height
 - Setback from barns and buildings = tip height

For purposes of this Article, "residence" means the primary physical structure on a residential lot utilized as a single family home; the term 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 residence considered, or to 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. "Amendment Request" means the request for amendment submitted by Desert Claim Wind Power on February 26, 2018.
2. "Amendment No. 1" means this formal written agreement, as amended and approved by Council Resolution No. 343.
3. "Application" means the *Application for Site Certification: Desert Claim Wind Power Project*, designated No. 2006-02, submitted November 6, 2006, as supplemented in the Revised Application filed in February 2009.
4. "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.
5. "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 that may delivered as a part of testing and startup of the Project.
6. "BMPs" means Best Management Practices.
7. "Bonneville" or "BPA" means Bonneville Power Administration.
8. "Certificate Holder" means Desert Claim Wind Power LLC, any and all parent company(ies), or an assignee or successor in interest authorized by the Council.
9. "CFE" means the Counsel for the Environment serving by appointment pursuant to RCW 80.50.080.
10. "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.
11. "County" means Kittitas County, Washington.

12. "DAHP" means the Washington State Department of Archeology and Historic Preservation.
13. "Desert Claim Wind Power Project" or "Project" means: wind turbine generators (WTGs) and their construction areas; 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; temporary construction-related facilities; other related Project facilities as described in the Revised Application. The specific components of the Project are identified in Article I.0.
14. "DNR" means the Washington State Department of Natural Resources.
15. "Ecology" means the Washington State Department of Ecology.
16. "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.
17. "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.
18. "EIS" or "Final EIS" means the Desert Claim Wind Power Project Final Environmental Impact Statement (August 2004) issued by Kittitas County pursuant to the requirements of the State Environmental Policy Act, and adopted by EFSEC.
19. "End of Construction" means the time when all Project facilities have been substantially constructed and are in operation.
20. "FAA" means the Federal Aviation Administration.
21. "Force Majeure Event" means any event beyond the control of the Party affected that directly prevents or delays the performance by that Party 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.
22. "IBC" means the International Building Code.
23. "Micro-siting" means the final technical and engineering process by which the Certificate Holder shall determine the final location of each wind turbine generator.
24. "NPDES permit" means National Pollutant Discharge Elimination System permit.

25. "PSE" means Puget Sound Energy.
26. "RCW" means the Revised Code of Washington.
27. "Revised Application" means the Desert Claim Wind Power Revised Application for Site Certification submitted on February 6, 2009.
28. "SEIS" or "FSEIS" (also "Supplemental EIS or "Final Supplemental EIS") means the Desert Claim Wind Power Project Final Supplemental Environmental Impact Statement issued on November 6, 2009 by EFSEC pursuant to the requirements of the State Environmental Policy Act.
29. "SEPA Addendum" Means the Final Addendum to the Final Supplemental EIS issued on November 1, 2018 by EFSEC, pursuant to the requirements of the State Environmental Policy Act (SEPA).
30. "Site," "Project Site" or "Project Area" means the approximately 4,400 acre property identified in Attachment 1, located in Kittitas County, on which the Project is to be constructed and operated.
31. "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.
32. "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.
33. "State" or "state" means the state of Washington.
34. "Substantial Completion" means the Project is generating and delivering energy to the electric power grid.
35. "TAC" means Technical Advisory Committee as described in Article IV.E.8.
36. "UBC" means the Uniform Building Code of 2015.
37. "WAC" means the Washington Administrative Code.
38. "WDFW" means the Washington Department of Fish and Wildlife.
39. "WSDOT" means the Washington State Department of Transportation.
40. "WTG" means wind turbine generator.

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 Revised Application, the Amendment Request, and in the testimony and exhibits in the Applicant's direct case, the Certificate Holder's Stipulation with Counsel for the Environment and its Agreement with the Washington Department of Fish and Wildlife (the Revised Application, the Stipulation and the Agreement are 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 RCW 34.05 and RCW 80.50, for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, for violations of RCW 80.50 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 legally obligated to, conduct a hearing pursuant to RCW 34.05.

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, by hand-delivery, first class mail, or by e-mail.

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 General Counsel, 15445 Innovation Drive, San Diego, California 92128, with a copy to Perkins Coie LLP, Attention: Karen McGaffey, 1201 Third Avenue, Suite 4800, Seattle, Washington 98101.

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, 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, environmental monitoring as provided in this Agreement and 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 RCW 80.50. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.

The Certificate Holder shall deposit or otherwise guarantee payment of all EFSEC Costs as defined in Article II.15, for the period commensurate with the activities of this Agreement. EFSEC shall provide the Certificate Holder an annual estimate of such costs. Any 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, WAC 463-72 in effect at the time of submittal of the Application.

The Certificate Holder shall develop an Initial Site Restoration Plan in accordance with the requirements set out in Article IV.D of this Agreement and in consultation with WDFW, and submit it to EFSEC for approval. 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 guarantees, 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 Personnel

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. No change in ownership or control of the Project shall be effective without prior Council approval 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, provided the change does not result in a material alteration of the size or location of the Project.
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 Amendment Request, the Final EIS or Final SEIS, 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 to pursue ongoing, or continuing temporary, arrangements under other authority, including but not limited to RCW 34.05, RCW 80.50 RCW or Title 463 WAC.

L. Order of Precedence

In the event of an inconsistency or apparent ambiguity in this Agreement, the inconsistency or ambiguity 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, including any other provision, term or material incorporated herein by reference or otherwise attached to, or incorporated in, this Site Certification Agreement;
3. Representations in Applicant's testimony and exhibits in the adjudicative proceeding in this matter;
4. The application of common sense to effect a result consistent with law and the principles effected in this document.

M. Review and Approval Process; Exceptions

1. Except for the Initial & Final Site Restoration Plans, prior to any site work, the Council may delegate to the EFSEC Manager authority to approve or deny the construction and operational plans required by the this Agreement. The EFSEC Manager shall ensure the construction and operational plans have been sufficiently reviewed prior to approval.
2. The Council Manager may allow temporary exceptions from plan requirements or provisions of the SCA when such exceptions are not contrary to the purposes of the SCA, provided that a record is kept and Council members are immediately notified. Any Council member may within seven days of the notice put the item on a Council meeting agenda for review.

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 Revised Application, the Amendment Request or identified in the final SEIS and SEPA Addendum as commitments made by Desert Claim.

No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall file with EFSEC a comprehensive list of these mitigation measures. For each of these mitigation measures, the Certificate Holder shall in the same filing 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 submit to EFSEC a Construction Stormwater Pollution Prevention Plan (Construction SWPPP), and provide a copy to WDFW for comment. The Construction SWPPP shall meet the requirements of the Ecology stormwater pollution prevention program (WAC 173- 230), 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 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. Temporary Erosion and Sediment Control Plan. The Certificate Holder shall develop a Temporary Erosion and Sediment Control (TESC) Plan. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit the TESC Plan to the Council for approval and provide a copy to WDFW for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the TESC Plan. As an alternative to submitting a separate TESC Plan, the Certificate Holder may include measures for temporary erosion and sedimentation control in the Construction SWPPP required in Article IV, Section C.2, above.
4. Construction Spill Prevention, Control and Countermeasures Plan. The Certificate Holder shall develop a Construction Spill Prevention, Control, and Countermeasures Plan (Construction SPCCP), consistent with the requirements of 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. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit the Construction SPCCP to the Council for approval and provide a copy to WDFW and Ecology for comment. 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 463-72-040 in effect on the date of Application, in consultation with WDFW. The Certificate Holder shall submit the Initial Site Restoration Plan to the Council for review at least sixty (90) 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 objective of the Plan shall be to restore the site to approximate pre-Project condition or better. The Plan shall require removal of the wind turbine nacelles, blades, towers, foundations, cables and other facilities to a depth of four feet below grade, regrading of areas around the Project facilities and final restoration of disturbed land. Among other things, the Plan will address timing and intensity of grazing to ensure successful revegetation.

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 described in the Revised Application, the Amendment Request, Final EIS, Final SEIS, and SEPA Addendum that will be implemented for decommissioning of the Project.
4. An Initial Site Restoration Plan, which 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 to four feet below grade and the regrading of the site.
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. Habitat Mitigation Plan. Prior to the beginning of Site Preparation, the Certificate Holder shall develop a Habitat Mitigation Plan in consultation with WDFW, based upon the compensatory mitigation ratios outlined in the 2009 WDFW Wind Power Guidelines. The Certificate Holder shall submit the Habitat Mitigation Plan to EFSEC for approval at least 60 days prior to the beginning of Site Preparation.
 - a) The Certificate Holder and WDFW will agree upon a map of habitat types found within the Project Area ("Habitat Map"). This Habitat Map will be based upon

the Natural Resources Conservation Service (NRCS) maps of soils and ecological sites, and field investigations of the Project Area.

- b) The Habitat Mitigation Plan will specify the Certificate Holder's Mitigation Obligation. The Certificate Holder's Mitigation Obligation will be calculated using the mitigation ratios specified in the 2009 WDFW Wind Power Guidelines. For purposes of calculating the Mitigation Obligation, expected habitat impacts will be determined based upon the pre-construction Project Layout drawings and the habitat types shown on the Habitat Map. Pre-construction Project Layout drawings will show expected permanent and temporary land disturbances.
 - c) The Certificate Holder may satisfy its Mitigation Obligation either by purchasing a mutually acceptable mitigation parcel and deeding it to WDFW or a mutually acceptable third party, by contributing money to a mutually acceptable third-party that owns or will purchase a mitigation parcel, or by paying WDFW a fee of one thousand seven hundred fifty dollars (\$1,750.00) per acre in lieu of mitigation. If the Certificate Holder has not satisfied its Mitigation Obligation prior to commencing Site Preparation, the Certificate Holder will provide a letter of credit to EFSEC in an amount sufficient to provide financial security for the Mitigation Obligation. The Certificate Holder will be required to satisfy its Mitigation Obligation prior to commencing commercial operation of the Project.
 - d) The Habitat Mitigation Plan will include a process to determine the actual impacts to habitat following the completion of construction. In the event that actual impacts to habitat exceed the expected impacts determined prior to construction, the Habitat Mitigation Plan will include a mechanism for the Certificate Holder to provide supplemental compensatory mitigation (Supplemental Mitigation). Supplemental Mitigation, if any, may take the form of an additional mitigation parcel, the contribution of additional funds to a third-party who owns or will purchase an additional mitigation parcel, or the payment of an additional fee of one thousand seven hundred fifty dollars (\$1,750.00) per acre to WDFW lieu of mitigation.
2. Rare Plants. The Certificate Holder shall complete a rare plant survey of the Project Area. If plants of concern are identified on the Project site and significant adverse impacts to such plants are anticipated, then the Certificate Holder shall develop a Plant Conservation Plan in consultation with the Washington Natural Heritage Program and submit it to EFSEC for approval no later than 60 days prior to the beginning of Site Preparation.
3. Wetlands, Streams and Riparian Areas.
- a) Except as authorized by a Clean Water Act section 404 permit, construction of the Project shall not result in any temporary or permanent disturbance of wetlands or other surface waters considered to be Waters of the United States by the Department of the Army, Corps of Engineers for purposes of the Clean Water Act, 33 U.S.C. § 1301 et seq.

- b) Prior to construction of the site, a final set of wetland buffers, setbacks, and mitigation standards for permanent and temporary impacts shall be determined by EFSEC in consultation with Ecology. Wetland buffers shall be determined in accordance with applicable provisions of the Kittitas County Code for Critical Areas in KCC 17A. Where supported by the following Ecology guidance documents, EFSEC may require buffers of greater width than would be required under KCC 17A: Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance, Ecology Publication #06-06-011a (March 2006); Wetland Mitigation in Washington State - Part 2: Developing Mitigation Plans, Ecology Publication #06-06-011b (March 2006); Update on Wetland Buffers: The State of the Science, Final Report, Ecology Publication #13-06-11 (October 2013). Based on the final wetlands mitigation requirements from EFSEC, the Certificate Holder shall submit a Wetlands Mitigation Plan to EFSEC for approval at least sixty (60) days prior to the beginning of Site Preparation, which shall summarize how the Site is in compliance with those wetland buffers, setbacks and mitigation standards.

The Certificate Holder will be required to conduct wetland mitigation monitoring for a period of 10 years.

- c) When finalizing construction plans, the Certificate Holder will coordinate with WDFW and Ecology regarding finalizing construction and operating plans, in relation to micro-siting of project facilities and roads, in order to avoid or minimize the facility elements' temporary and permanent impacts on streams and wetlands.
- d) If any unanticipated disturbance of wetlands occurs, the Certificate Holder shall prepare a Wetlands Restoration Plan in consultation with WDFW and submit it to EFSEC for approval.
- e) Prior to any construction work affecting the bed or flow of in waters of the State (including seasonally dry channels), the Certificate Holder will consult with and obtain approval from WDFW, and provide documentation of such approval to EFSEC. At least sixty (60) days prior to beginning any such channel work, the Certificate Holder shall submit construction drawings to EFSEC for review and approval. 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.

- 4. Construction Soil Management and Vegetation Plan. In consultation with WDFW, the Certificate Holder shall develop a Construction Soil Management and Vegetation Plan. No later than sixty (60) days prior to the beginning of Site Preparation, the Construction Soil Management and Vegetation Plan shall be submitted to the Council for review and approval. The Certificate Holder shall not begin Site Preparation prior to obtaining EFSEC approval of the Soil Management and Vegetation Plan.

5. Wet Season Construction. Construction activities are not restricted to particular seasons however the Certificate Holder shall attempt to sequence construction activities in order to minimize temporary earth disturbances during the wet season where practical. In particular, the Certificate Holder shall avoid earth-disturbing activities that result in distinct areas of temporary habitat disturbance (e.g. cross- county trenching to install electric collector system lines) in shrub-steppe areas when soils are saturated (which commonly occurs from mid-November through April) to the greatest extent possible. If such activities are to take place during periods of soil saturation, the Certificate Holder shall consult with WDFW to develop a specific plan incorporating strategies and best management practices to minimize the environmental impacts of the activities and additional restoration measures to ensure successful restoration of the disturbed habitat.
6. Habitat Restoration Plan. In consultation with WDFW, the Certificate Holder shall develop a Habitat Restoration Plan for temporarily disturbed areas.

The Habitat Restoration Plan shall require that all temporarily disturbed areas be reseeded with an appropriate mix of native, locally-adapted plant species in a manner and sequence that will maximize the likelihood of successful restoration of the area and prevent the spread of noxious weeds. Among other things, the Plan shall address the timing and intensity of grazing during revegetation. The Plan shall include a pre-identified reference site or sites that the Certificate Holder, the TAC and WDFW can use to gauge the success of the habitat restoration and revegetation efforts. The Habitat Restoration Plan shall include a restoration schedule that identifies timing windows during which restoration should take place, and an overall timeline for when all restoration activities will be completed. WDFW and the TAC may suggest modifications to the initial Habitat Restoration Plan as new information becomes available.

No later than sixty (60) days prior to the beginning of Site Preparation, the Habitat Restoration Plan shall be submitted to the Council for review and approval. The Certificate Holder shall not begin Site Preparation prior to obtaining EFSEC approval of the Habitat Restoration Plan.

7. Noxious Weed Control Plan. In consultation with WDFW, the Certificate Holder shall develop a Noxious Weed Control Plan. No later than sixty (60) days prior to the beginning of Site Preparation, the Noxious Weed Control Plan shall be submitted to the Council for review and approval.
8. Technical Advisory Committee. The purpose of the Technical Advisory Committee (TAC) is to ensure that monitoring data collected pursuant to the required Avian Monitoring Plan (see Article VI.C), the Bat Monitoring Plan (see Article VI.E.) and other related monitoring data are 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 Revised Application, the Amendment Request, the Final EIS, the Final SEIS and SEPA Addendum, or significantly 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, and new scientific findings made at wind generation facilities with respect to the impacts on habitat and wildlife, as they may relate to the Desert Claim 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, or individual members thereof, will be authorized to consult, exchange information, and collaborate with TACs from other wind turbine projects, including the Kittitas Valley Wind Power Project and the Wild Horse Wind Power Project, for purposes of identifying and monitoring cumulative environmental impacts, and, if necessary, developing mitigation recommendations addressing known or newly identified cumulative impacts related to the construction and operation of wind power projects.

The TAC may include, but need not be limited to, representatives from WDFW, U.S. Fish and Wildlife Service, Audubon Washington or its member chapters, EFSEC, Kittitas County, DNR, 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. All TAC members must be approved by EFSEC.

With the exception of DNR, no representative to the TAC may be party to a turbine lease agreement, or any other contractual obligation with the Certificate Holder.

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 at the first TAC meeting for 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. If the TAC is terminated or dissolved, EFSEC may reconvene and reconstitute the TAC at its discretion.

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

9. Pre-Construction Raptor Nest Survey. During the nesting season immediately prior to beginning Site Preparation, the Certificate Holder shall conduct a raptor nest survey. The results of the survey shall be submitted to EFSEC and will be used to determine timing restrictions and/or buffer distances to active raptor nests.
10. Pre-Construction Townsends Ground Squirrel Survey. Prior to commencing Site Preparation, the Certificate Holder shall survey the Project site for Townsends Ground Squirrels and/or their burrows, using a protocol developed in consultation with the WDFW. If Townsends Ground Squirrels are found to exist on the Project site, the Certificate Holder shall consult with WDFW to determine whether proposed construction activities are likely to have significant adverse impacts on the Townsends Ground Squirrel population, taking into account the habitat mitigation being provided by the Certificate Holder. If the Certificate Holder and WDFW conclude that significant impacts are likely, the Certificate Holder, in consultation with WDFW, shall develop a plan to implement reasonable and practical mitigation measures during construction. This plan shall be submitted to EFSEC for approval thirty (30) days prior to Site Preparation.

F. Construction Traffic Development Standards

Development Standards: The Certificate Holder shall incorporate the following development standards into the design and construction of the Project.

1. Project Access Roads. Access to the turbines will be achieved via graveled roads branching from Smithson Road.

Access from County roads shall be constructed with the appropriate slopes and culverts in accordance with Kittitas County standards in effect on the date of the Application in this matter. All roads within the site shall be designed in consultation with the fire services provider, pertinent state agencies and emergency suppliers to ensure that fire vehicles can gain safe 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. The Certificate Holder shall repair any damage to County roads, such that the roads meet or exceed Kittitas County standards.
3. Project Site Access. Project roads run across both private and public (DNR) 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 on the portion of the Project site owned by DNR. Adaptive management allows for changes over time to the level of control and types of activities on DNR lands, as needed. In general, the Certificate Holder will permit controlled access on the DNR lands, as long as it does not interfere with or introduce adverse impacts to Project operations or personnel. The Certificate Holder will have no obligation to provide access on or across private lands.

4. 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 Construction Traffic Management Plan should address increased construction traffic on Smithson Road to limit construction delivery vehicles during peak travel times and to accommodate agricultural road use on Smithson Road. 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 3, above.
5. Oversize or Overweight Hauls. The Certificate Holder shall notify EFSEC, at the earliest time possible, of any permits or approvals required to conduct oversize or overweight hauls.

G. Federal Aviation Administration 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).

H. Cultural and Archeological Resources Plan

With the assistance of an experienced archeologist, and in consultation with the Yakama Nation and the Department of Archeology and Historic Preservation (DAHP), the Certificate Holder shall develop a Cultural Resources Monitoring and Mitigation Plan for monitoring construction activities and responding to the discovery of archeological resources or buried human remains. The development of the Cultural Resources Monitoring and Mitigation Plan must be done in coordination with DAHP and the Yakama Nation and approved by EFSEC. The following must be considered during the plan development:

- Avoidance of the concentrated-resource areas.
- Habitat rehabilitation of impacted-resource areas as a means of mitigation for impacts to the diffuse-resource areas.
- Archaeological sites be provided a minimum 30 meter/100 foot buffer.
- Archaeological isolates should be further studied and be provided a minimum 15 meter/50 foot buffer.
- 51 rock features should be re-evaluated and recorded as archaeological sites.
- Archaeological monitoring during construction when ground-disturbing activity is involved.

The Certificate Holder shall provide copies of the draft Plan for comment to potentially affected tribes, prior to submitting the plan for EFSEC approval. The Certificate Holder shall submit the Plan to EFSEC for review and approval no later than sixty (60) 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 Plan shall provide for the avoidance of significant archeological sites where practical. For sites to be avoided, the boundaries of identified cultural resources and

buffer zones shall be staked in the field and flagged as no-disturbance areas to avoid inadvertent disturbance during construction. These site markings will be removed following construction. The Plan shall address alternative mitigation measures to be implemented if it is not practical to avoid archeological sites or isolates.

2. The Plan shall address the possibility of the unanticipated discovery of archeological artifacts during construction. If any archaeological artifacts, including but not limited to human remains, are observed during construction, disturbance and/or excavation in that area will cease, and the Certificate Holder shall notify the DAHP, EFSEC, and the affected tribes and in the case of human remains the County Coroner or Medical Examiner. 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 Project facilities cannot be moved or re-routed to avoid the resources, the Certificate Holder shall contact EFSEC and DAHP for further guidance which may require the implementation of a treatment plan. If a treatment plan is required, it shall be developed in consultation with DAHP and any affected tribes.
3. If a tribe requests to have its representatives present during earth-disturbing construction activities, the Certificate Holder shall accommodate reasonable requests. In all cases the Certificate Holder shall inform EFSEC of each such tribal request.

I. 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. Prior to commencing Site Preparation, the Certificate Holder shall verify continuing protection through DNR for Desert Claim facilities on land leased from that agency and shall execute a fire protection services agreement with a fire services provider such as Kittitas Valley Fire and Rescue for the Project site to ensure that adequate fire protection services are in place during the construction and operations of the Project.
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 at any time. The Certificate Holder shall submit the Fire Control Plan to EFSEC for review and approval at least sixty (60) days prior to Site Preparation and provide a copy to WDFW, DNR and Ecology for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Fire Control Plan.

J. Construction Management Plan

The Certificate Holder shall with the assistance of Council Staff develop a detailed Construction Management Plan in consultation with WDFW and other affected State and local agencies. The Plan shall address the primary Site Preparation and Construction phases for the Project, and shall be generally based on the mitigation measures contained in this Agreement and the Revised Application. At least sixty (60) days prior to the start of Site Preparation, the Certificate Holder shall submit the Construction Management Plan to the Council for review and approval. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction Management Plan.

K. 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. Thereafter, the Certificate Holder shall notify EFSEC of any significant changes in the construction schedule.

L. 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 Certificate Holder shall also provide copies to WDFW, DNR, Ecology and other agencies as EFSEC may direct, for comment. 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 consult with WDFW on ways to minimize road construction and other habitat impacts prior to preparing final construction plans. The Certificate Holder shall also consult with emergency services suppliers prior to preparing final road construction plans, to ensure that interior Project roads are sufficient to provide reliable access by emergency vehicles, in its final design for construction, the Certificate Holder, shall maximize the use of existing roads and pathways, and minimize the construction of new roads as much as reasonable and practical, and without disrupting wetlands or other sensitive habitat. The final design shall be subject to approval by EFSEC.
3. The Certificate Holder shall provide a final project layout plan to demonstrate that project structures comply with the setback conditions of Article I.C.6.
4. Project buildings, structures, and associated systems shall be designed and constructed consistent with code 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 2015.
5. The Certificate Holder shall design, install, operate and maintain the domestic on-site septic 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 lease(s) with DNR.

ARTICLE V: PROJECT CONSTRUCTION

A. Environmental Monitoring During Construction

1. Environmental Monitor (EM). EFSEC will provide full-time on-site environmental monitoring for the construction phase of the Project, at the Certificate Holder's cost. The

EM 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. Preconstruction Meeting. A preconstruction meeting shall be held between the Environmental Monitor and the construction team to review and clarify construction related plans, special concerns, and construction techniques prior to beginning work.
4. 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 at the Project 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.
5. Environmental Monitor Weekly Reports. The EM will provide weekly reports to EFSEC regarding adherence to BMPs, the implementation of environmental mitigation plans, and environmental problems reported or discovered as well as corrective actions taken by the Certificate Holder to resolve these problems. The EM will provide copies to the Certificate Holder of reports submitted to EFSEC.
6. Environmental Violations and Stop-Work Orders. 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 request that EFSEC issue a "stop work" order for that portion of the work not in compliance with Project environmental requirements. EFSEC will promptly notify The EM of any "stop work" orders that have been issued.
7. 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.

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 or UBC and other relevant regulations. EFSEC may contract with Kittitas County, another appropriate agency or an independent firm to provide these 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. Habitat, Vegetation, Fish and Wildlife

1. The Certificate Holder shall use construction techniques and Best Management Practices (BMPs) to minimize potential impacts to habitat and wildlife;
2. The Certificate Holder shall ensure that the construction team includes a qualified staff person or persons with experience in construction in sensitive arid environments similar to that found in the Project Area.
3. Construction teams shall stake work and clearing limits prior to construction and ground clearing.
4. The Certificate Holder shall avoid the installation of above-ground collector lines where practical. To the extent practical, collector lines shall be installed in or alongside roadways, in areas currently disturbed, in other areas that will be permanently disturbed by Project construction, or by directionally drilling under surface waters. When it is not practical to avoid the installation of above-ground collector lines, the Certificate Holder shall consult with WDFW to determine the most practical alternative with the least adverse environmental impacts. Any above-ground collector lines will be designed to comply with the current Avian Power Line Interaction Committee Guidelines.
5. The Certificate Holder shall post, maintain and enforce driving speed limits of 25 miles per hour within the Project Area to minimize potential collisions with wildlife during construction

6. All permanent meteorological towers shall be free-standing monopoles without guy wires. The Certificate Holder shall use bird markers on all temporary meteorological towers with guy wires.
7. The Certificate Holder, in consultation with its wildlife consultant and WDFW, shall schedule the sequence of construction activities and/or locations across the Project Area in a manner that will minimize risks to Loggerhead Shrike, Sage Thrasher and Long-billed Curlews that may nest in the Project Area during the months of April through June to the extent that it is reasonable, practical and feasible to do so. The Certificate Holder shall not be required to avoid or restrict construction activities during those months.
8. The Certificate Holder shall promptly remove carcasses and livestock afterbirths from the Project Area during construction of the Project. The Certificate Holder shall consult with WDFW in the development and implementation of this removal program.

F. 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(2) (b) during the hours of 10:00 p.m. and 7:00 a.m.

G. 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 and implement a Construction Phase Health and Safety Plan 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.

H. Fugitive Dust

The Certificate Holder shall implement appropriate mitigation measures to control fugitive dust from roads and construction activities. The Certificate Holder shall use water or a water-based, environmentally safe dust palliative such as lignin, for dust control on unpaved roads during Project construction. The Certificate Holder shall not use calcium chloride for dust suppression.

I. 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.

J. Light, Glare and Aesthetics

The Certificate Holder shall implement mitigation measures to minimize light and glare impacts. Project buildings shall be constructed of local materials and in local building styles to maximize their fit into the local landscape, and shall be landscaped with native shrub-steppe vegetation around buildings and equipment boxes to integrate the structures into the surrounding landscape. Project structures shall be painted with neutral/low reflectivity finishes to the extent feasible. The Certificate holder shall neither place nor allow advertising, logos, cellular antennas, or other clutter on the turbines, nacelles, or buildings of the Project. 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 and other lighting required by other government agencies. Outdoor lighting at the O&M facility and substation(s) will be minimized to safety and security requirements, motion sensors will be used to keep lighting turned off when not required, and lighting will be equipped with hoods and directed downward. If compliance with any of these requirements is not feasible, the Certificate Holder may seek a waiver from the Council.

The Certificate Holder shall investigate the application of an Aircraft Detection Lighting System (ADLS) prior to construction and report its findings to EFSEC. The report should include the benefits and feasibility of ADLS for the Desert Claim project.

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) in consultation with WDFW 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. The Certificate Holder shall prepare an Operations Spill Prevention, Control and Countermeasures Plan (Operations SPCCP) in consultation with WDFW and submit it to EFSEC for review and approval at least thirty (30) days prior to the beginning of commercial operation. 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 Operations Emergency 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.I.1.
2. Fire Protection Services. The Certificate Holder shall maintain fire protection services agreement(s) pursuant to IV.I.2 of this Agreement for the entire Project, for the life of the

Project or until and to the extent that the Project site is annexed into a Fire District or other municipal entity that provides fire protection services.

3. Operations Fire Control Plan. The Certificate Holder shall develop an operations phase Fire Control Plan in consultation with WDFW and WDNR and in coordination with other 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 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 consultation with the WDFW. The Avian Monitoring Plan shall be based upon the 2009 WDFW Wind Power Guidelines, although the Certificate Holder and WDFW may agree to depart from the Guidelines if circumstances warrant. The purpose of the plan shall be to quantify impacts to avian species and to assess the adequacy of mitigation measures implemented. Results shall be reported to EFSEC and the TAC. The monitoring plan shall include the following components:

1. The Certificate Holder shall implement an avian 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.
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 Council will commission or review for approval a two-year monitoring study by a third-party consultant to evaluate impacts to avian species. This study will include, at a minimum, standardized casualty searches, searcher efficacy trials and scavenger removal trials.
4. The Post-Construction Avian Monitoring Plan for the Project will follow a detailed written protocol that will document the monitoring measures being conducted.
5. EFSEC shall reconvene the TAC if unanticipated circumstances arise during incidental monitoring.

D. Post-Construction Bald Eagle Study Plan

In consultation with the Counsel for the Environment (CFE) and WDFW, the Certificate Holder shall develop a Bald Eagle Study Plan to study the behavior of bald eagles during calving operations in the first two years of Project operation and submit the Plan to EFSEC for approval no later than 60 days prior to commencing Commercial Operation.

The Certificate Holder shall implement the Plan and present the results of the study to the TAC. The TAC will consider the study results and determine whether the calving operations in the Project Area present an unreasonable risk to bald eagles. If so, the TAC will develop recommendations regarding possible additional mitigation measures that may further reduce the risk to bald eagles. Mitigation measures that may be considered include, but are not limited to, modifying the operation of the wind turbines, modifying or moving the calving operations within the Project Area, or removing the calving operations from the Project Area. The TAC will submit its findings and recommendations for mitigation measures, if any, to EFSEC for EFSEC's consideration. EFSEC will have final authority to decide whether to require the implementation of additional mitigation measures addressing this issue.

In the event that a bald eagle is killed by a turbine during calving operations in the Project Area, the Certificate Holder will report the fatality to EFSEC, the TAC and the United States Fish and Wildlife Service within forty-eight (48) hours. In the TAC Rules of Procedure, the Certificate Holder will propose that, within thirty (30) days, the TAC evaluate the available information and consider whether there are practical additional measures that should be implemented to reduce the risk to bald eagles and report its findings and recommendations, if any, to EFSEC.

E. Pre-Operation Bat Survey and Bat Monitoring Plan

Prior to beginning commercial operation, the Certificate Holder, in consultation with WDFW, shall conduct a bat monitoring survey during the bat migration (late summer and early fall). The survey shall utilize current technology and methodology to document bat use of the site, including which if any species are at risk from site operation. Detectors shall be placed at an appropriate elevation to monitor migrating bats within the rotor sweep zone.

The Certificate Holder shall consult with the CFE and WDFW in developing the protocol for the survey. The Certificate Holder shall present the results of the survey to the TAC. If, based on the survey results, the TAC concludes that the Project presents a significant risk to bats that is substantially greater than the risk described in the Final SEIS; the TAC may recommend to EFSEC that additional mitigation measures be required.

The Certificate Holder shall develop a post-construction Bat Monitoring Plan in consultation with WDFW and submit the plan to EFSEC for approval no later than sixty (60) days prior to commencing Commercial Operation. The plan shall include two years of bat fatality 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.1. and the Ecology *Stormwater Management Manual for Eastern Washington, September 2004*.

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

B. Noise Emissions

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

The Certificate Holder shall submit a Complaint-Based Noise Monitoring and Response Plan to EFSEC for review and approval prior to operation, to address low frequency noise and aeroacoustic noise.

C. Fugitive Dust Emissions

The Certificate Holder shall continue to implement 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 Revised Application, 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 a fire services provider such as Kittitas Valley Fire and Rescue to provide fire protection services during the construction and operation of the Project, and in conjunction with DNR, implement protection services on DNR land leased by the Certificate Holder.
3. Operational BMPs to minimize storm water runoff and soil erosion.
4. Implementation of the noxious weed control program, in coordination with WDFW, to control the spread and prevent the introduction of noxious weeds.
5. Cattle ranchers who have leased property for the Project may continue conducting calving operations in fenced areas within the Project Area. The Certificate Holder will not site any turbine within the fenced calving areas or within a buffer area equal to the length of a turbine blade plus one hundred feet from the fence line. The Certificate Holder shall not permit calving operations to take place on the portion of the Project Area that will be owned by the Certificate Holder or an affiliate of the Certificate Holder. Cattle ranchers who have leased property for the Project may continue conducting calving operations in fenced areas within the Project Area. During calving operations, the Certificate Holder will not operate any turbine within the fenced calving areas or within a buffer area equal to the length of a turbine blade plus one hundred feet from the fence line of the calving operations.
6. The Certificate Holder shall promptly remove carcasses and livestock afterbirths from the Project Area during operation of the Project. The Certificate Holder shall consult with WDFW in the development and implementation of this removal program.

7. The Certificate Holder shall avoid the use of rodenticides to control rodent burrowing around wind turbine towers as much as possible. In the event that the Certificate Holder believes the use of rodenticides is necessary, the Certificate Holder shall consult with WDFW to develop a plan for appropriate application and use, and submit the plan to EFSEC for approval prior to implementation.
8. The Certificate Holder shall cooperate with WDFW in its efforts to manage deer and elk in the Project vicinity. The Certificate Holder shall not prohibit hunting in the Project Area, except when the Certificate Holder determines that hunting would place personnel, property or equipment in jeopardy.

E. Safety and Security

1. Personnel Safety. The safety of operating personnel is governed 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. 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 no later than sixty (60) days before the beginning of Commercial Operation. The Plan shall include, but shall 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 any visitor's center and 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 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.

F. 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, WAC 463-40 and WAC 173-303. 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.

G. 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.

H. Shadow Flicker Mitigation Measures

The Certificate Holder will attempt to avoid, minimize and mitigate shadow flicker at nearby residences. Shadow flicker can usually be addressed by planting trees, shading windows or other mitigation measures. As a last resort the control system of the wind turbine could be programmed to stop the blades during the brief periods when conditions result in perceptible shadow flicker.

The Certificate Holder shall develop a mitigation and complaint monitoring plan to respond to any residential complaints regarding shadow flicker. The mitigation plan will include avoidance, minimization, and mitigation of shadow flicker through turbine shut down, planting trees, shading windows, or other mitigation measures. The complaint monitoring plan will be reviewed and approved by EFSEC prior to operation and, at a minimum, will include:

- Notification of EFSEC within five (5) business days of receipt of any request to mitigate shadow flicker.
- Notification of EFSEC within two (2) weeks of original receipt, of the actions taken in response, and
- EFSEC shall retain authority to review and override the Certificate Holder's denial(s) of any requests or choice of mitigation 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 by WAC 463-72-050 (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 463-66-090.

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 four (4) feet below grade; regrading 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 reseedling 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 has the right to require, 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. of this Amended Site Certification Agreement.

ARTICLE IX: SITE CERTIFICATION AGREEMENT - SIGNATURES