

**SITE CERTIFICATION AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON**

**AND**

**BP WEST COAST PRODUCTS, LLC**



**For the**

**CHERRY POINT COGENERATION PROJECT**

**WHATCOM COUNTY, WASHINGTON**

**Executed December 21, 2004**

**Amendment No. 1: Resolution No. 317, October 10, 2006**

**Amendment No. 2: Resolution No. XXX, XXXXXXXX XX, 2008**

**ENERGY FACILITY SITE EVALUATION COUNCIL**

**OLYMPIA, WASHINGTON**

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FOR THE CHERRY POINT COGENERATION PROJECT  
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## Attachments

- 1 Site Legal Description.
- 2 Legal Description of Wetland Mitigation Property and Deed Restrictions for Wetland Mitigation Areas.
- 3 Prevention of Significant Deterioration/Notice of Construction Permit.
- 4 National Pollutant Discharge Elimination System Permit.
- 5 Wastewater Disposal Permit.
- 6 Amended Stipulation Between the Council for the Environment and BP West Coast Products, LLC dated December 10, 2003.
- 7 BP – Whatcom County Amended Stipulation and Settlement Agreement dated July 27, 2004.
- 8 Council Order No. 803, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition, dated September 24, 2004.
- 9 Letter of Understanding (LOU) 66, between Washington State Department of Transportation (WSDOT) and BP Cherry Point Refinery regarding traffic mitigation during construction of the BP Cherry Point Cogeneration Project.
- 10 Council Resolution No. 317: Amendment No. 1, Cherry Point Cogeneration Project Site Certification Agreement.
- 11 Council Resolution No. XXX: Amendment No. 2, Cherry Point Cogeneration Project Site Certification Agreement.

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**SITE CERTIFICATION AGREEMENT  
FOR THE CHERRY POINT COGENERATION PROJECT**

between

**THE STATE OF WASHINGTON**

and

**BP WEST COAST PRODUCTS, LLC.**

This Site Certification Agreement (Agreement) is made pursuant to Chapter 80.50 of the Revised Code of Washington (RCW) by and between the State of Washington, acting by and through the Governor of the State, and BP West Coast Products, LLC, (BP or the Certificate Holder), 4519 Grandview Road, Blaine, Washington, 98230.

BP filed, as required by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of a natural gas-fired combined-cycle cogeneration facility to be located in the Cherry Point area of Whatcom County, Washington. The Council reviewed the application, conducted public and adjudicative hearings, and by order, recommended approval of the application by the Governor. On December 21, 2004, the Governor approved the Site Certification Agreement authorizing BP to construct and operate the Cherry Point Cogeneration Project (Project). The Council will administer this Agreement for the State of Washington. On October 10, 2006, the Council approved, by resolution, an amendment to this Agreement allowing an alternative phased construction schedule and project configuration, and other minor changes to this Agreement. On XXXXXX XX, 2008, the Council approved, by resolution, amendment to this Agreement changing the provisions governing the water supply for the Project.

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

The effective date of this Agreement shall be December 21, 2004.

## ARTICLE I: SITE CERTIFICATION

### A. Site Description

1. The Site on which the Cherry Point Cogeneration Project (Project) is to be constructed and operated is located in the Cherry Point area of unincorporated Whatcom County, and is described more particularly in Attachments 1 and 2 to this Agreement.
2. Within thirty (30) days of the effective date of this Agreement, the Certificate Holder shall provide the Council with the legal description of the property to be used for wetland mitigation. This legal description will be added to Attachment 2 of this Agreement. At least sixty (60) days prior to the beginning of site preparation, the Certificate Holder shall provide to EFSEC a copy of fully executed and recorded deed restrictions for the wetland mitigation areas, which shall be included as Attachment 2 of this Agreement.

### B. Site Certification

The State of Washington hereby authorizes the BP West Coast Products LLC (BP or Certificate Holder) to construct and operate the Project, as described in Article I.C. of this Agreement, subject to the terms and conditions set forth in Council Order No. 803, Findings of Fact and Conclusion of Law, And Order Recommending Site Certification on Condition, and this Site Certification Agreement. Such construction and operation shall be located within the areas designated herein and in the Revised Application for Site Certification submitted by BP on April 15, 2003, and as described in Attachments 1 and 2 to this Agreement. In addition, this Agreement incorporates the settlements and stipulated agreements made between BP and parties to the adjudicatory hearings set forth in Attachments 6 and 7 to this Agreement.

This Site Certification Agreement authorizes the Certificate Holder to begin construction of the Project by December 21, 2014; provided, however that the construction schedule that the Certificate Holder submits pursuant to Article IV.L of this Agreement demonstrates its intention and good faith basis to believe, that construction of the Project or Phase I of the Project shall be completed within thirty-three (33) months of beginning construction.

If the Certificate Holder does not begin construction of the Project or of Phase I of the Project as described in section D below, by December 21, 2009, the Certificate Holder shall report to the Council its intention to continue and shall certify that the statements and conditions contained in the Application are still valid and applicable, or identify any changes and propose appropriate resulting changes in the Site Certification Agreement to address changes. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the effective date of any necessary or appropriate changes to the Site Certification Agreement.



## C. Project Description

The Cherry Point Cogeneration Project will consist of a combined-cycle, Cogeneration Facility (Facility), and of wetlands Compensatory Mitigation and Restoration Areas. Unless the alternative phased configuration outlined in section D below is pursued, the Facility will consist of the three natural gas-fired combustion turbine generators with heat recovery steam generators, steam turbine generator, and associated equipment, buildings and structures. The Facility will have a gross nominal generation capacity of 738 megawatts (MW). Approximately 18 MW will be consumed on site, and 85 MW would be supplied to the BP West Coast Products LLC Refinery.

### 1. Combustion Turbine Generators

The Facility will have three General Electric Model 7FA natural gas-fired combustion turbine generator (CTG) units. Each gas-fired generator is expected to have a nominal power rating of 174 MW at average annual ambient temperatures. The Facility will be fired by natural gas, delivered at an estimated pressure of 550 psig, as measured at the turbine fuel train. Natural gas will be the only fuel fired in the turbines. The combustion turbines will use dry low-NOx technology.

### 2. Heat Recovery Steam Generators

Each CTG will be equipped with a heat recovery steam generator (HRSG) with supplemental duct-firing capability. The high temperature exhaust produced by each CTG will flow directly to an HRSG. Each HRSG will be equipped with Selective Catalytic Reduction and an oxidation catalyst for post-combustion NOx and CO emission reduction. Exhaust gases leaving each HRSG boiler will exit into a 150 foot tall steel stack.

### 3. Steam Turbine Generator and Process Steam

The Facility will be designed as a combined-cycle cogeneration facility. The steam produced by the HRSG will be delivered to the condensing steam turbine generator (STG). In addition, the Facility will be designed to deliver steam to the BP Cherry Point Refinery for use in refinery processes. The STG is rated to produce about 216 MW of electricity when 510,000 lbs/hr of steam is delivered to the refinery.

### 4. Fuel Supply

The Facility will be fueled with natural gas, delivered to the site by a connection to the 16-inch Ferndale Pipeline, which currently delivers natural gas from the West Coast Pipeline system at the United States - Canada border near Sumas, Washington to the BP Cherry Point Refinery and the Alcoa Intalco aluminum smelter. Natural gas may also be provided by a third party pipeline.

The Ferndale Pipeline will deliver gas to the Project site at a pressure of about 250-300 psig. The CGTs require a higher fuel pressure, so new electric-driven natural gas compressors will be installed to raise the pressure to approximately 550 psig at the Project battery limits.

Refinery fuel gas may also be used to fire the Project's duct burners so long as the project is able to comply with the emission limits found in the Prevention of Significant Deterioration/Notice of Construction permit (Attachment 3 of this Agreement).

#### 5. Water Supply System

The Facility will use industrial water provided by Whatcom Public Utility District No. 1 (PUD) pursuant to the PUD's existing water rights. The PUD owns and operates pipelines from its Nooksack River diversion facilities to both the Alcoa Intalco Aluminum Smelter and the BP Refinery. An underground pipe will be installed to transport water to the Facility.

**Deleted:** If the Alcoa Intalco Works aluminum smelter is in operation, the Facility will use recycled once-through cooling water from Alcoa, supplied by Whatcom County PUD.

Potable water required for drinking, personal washing and sanitation will be provided by the PUD or the Birch Bay Water and Sewer District.

#### 6. Water Discharge System

All process wastewater from the Facility will be collected and discharged to the BP Refinery wastewater treatment system pursuant to the conditions of a Wastewater Disposal Permit (WDP), included as Attachment 5 to this Agreement. BP Refinery wastewater is treated and discharged to the Strait of Georgia under National Pollutant Discharge Elimination System (NPDES) permit number WA-002290-0 issued by the Washington Department of Ecology.

Stormwater from the Facility will be collected, treated and discharged pursuant to the conditions of the NPDES permit included as Attachment 4 to this Agreement.

Sanitary wastewater from the Facility will be discharged to the Blaine Water and Sewer District.

#### 7. Cooling Tower

The Facility will use a wet evaporative, multi-cell, counterflow, mechanical draft cooling tower to cool condensed steam prior to entering the hotwell for condensate return and recycling into the boiler feedwater system.

#### 8. Electrical Interconnection

The Facility will provide electricity to the BP Cherry Point Refinery by two

230 kilovolt (kV) transmission lines and a new 230 kV substation located within the refinery.

The Facility will also export electricity to the Bonneville Power Administration system. A new 0.8-mile 230 kV transmission line will connect a new 230 kV switchyard at the Facility to an interconnection point with Bonneville's existing transmission corridor at Kickerville Road.

#### 9. Back-Up Generator

A small diesel-powered emergency generator will also be provided for emergency back up power to critical systems in the event of a total grid power failure. This generator is not expected to be larger than 1500 kW.

#### 10. Fire Water Pump

A small diesel-powered emergency fire water pump will also be provided for emergency fire water in the event of a total grid power failure. The pump is not expected to be larger than 265 hp.

#### 11. Wetlands Compensatory Mitigation and Restoration Areas

The Project includes the restoration of wetland areas.

Approximately 110 acres of degraded wetlands and surrounding uplands located in two Compensatory Mitigation Areas (CMAs) located north of Grandview Road will be restored. CMA1 consists of approximately 50 acres located east of Blaine Road and CMA2 consists of approximately 60 acres located west of Blaine Road. Historic drainage patterns will be restored by rerouting treated stormwater runoff and plugging existing ditches. Non-native invasive plant species, such as reed canary grass, will be removed and suppressed. Native plant communities will be established.

Approximately 4.86 acres of wetland and 4.41 acres of wetland buffers (collectively the "Restoration Area") that will be temporarily impacted by construction activities and equipment laydown will be restored. Wetland hydrology will be restored in the 4.86 acres of wetlands. Both wetland and buffer portions of the Restoration Area will be planted with a variety of forested, scrub-shrub and emergent plant communities dominated by native vegetation.

### **D. Alternative Facility Description – Phased Construction**

As an alternative to the Facility described in section C above, the Certificate Holder is authorized, at its discretion, to construct the Facility in two phases as outlined in this section. Unless specified otherwise below, aspects of the Project Description found in Section C above apply to the Alternative Phased Construction.

#### 1. Phase I

Phase I of the Facility will have two natural gas-fired CTG units, two HSRGs and a STG.

The CTGs will be either General Electric 7FAs, each with a nominal power rating of approximately 173 MW at average annual ambient temperatures, or Siemens SGT6-5000Fs, each with a nominal power rating of 198 MW. Natural gas will be the only fuel fired in the turbines. Natural gas will be delivered at an estimated pressure of 525 psig, as measured at the turbine fuel train. The combustion turbines will use dry low-NO<sub>x</sub> technology.

Each CTG will be equipped with a HRSG with supplemental duct-firing capability. The high temperature exhaust produced by each CTG will flow directly to an HRSG. Each HRSG will be equipped with Selective Catalytic Reduction and an oxidation catalyst for post-combustion NO<sub>x</sub> and CO emission reduction. Exhaust gases leaving each HRSG boiler will exit into a 150-foot tall steel stack.

Phase I will have a STG rated to produce 520-570 MW of electricity when 510,000 lbs/hr of steam is delivered to the refinery, depending on the model of turbine selected. The Facility will be designed as a combined-cycle cogeneration facility. The steam produced by the HRSG will be delivered to the condensing STG. In addition, the Facility will be designed to deliver steam to the BP Cherry Point Refinery for use in refinery process.

## 2. Phase II

Phase II will consist of modifications and additions to the Facility designed to increase its total gross capacity to no more than 738 MW. The Certificate Holder shall notify the Council of the specific modifications and additions, including equipment specifications and ratings, at least 180 days before commencing construction of Phase II. If the Council concludes that the proposed Phase II additions and modifications comply with the conditions set forth in this Agreement, it shall authorize the Certificate Holder to proceed with construction.

If the proposed Phase II construction would increase the Facility's total capacity to more than 738 MW, would not comply with conditions set forth in this agreement, or would result in environmental effects substantially greater than those associated with the originally approved project, the Certificate Holder shall be required to obtain an amendment to this Agreement (pursuant to the Council's rules and regulations) before proceeding with construction.

## ARTICLE II. DEFINITIONS

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

1. "Application" or "Revised Application" means the *Revised Application for Site Certification: BP Cherry Point Cogeneration Project*, designated No. 2002-01, dated April 15, 2003, and incorporated by reference herein.
2. "Approval" (by EFSEC) means an affirmative action by EFSEC or its authorized agents regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.
3. "Associated facilities" means: the natural gas fuel line from the Facility metering point at the Ferndale Pipeline to the turbines; the electrical transmission lines connecting the Facility to the Refinery and to the Bonneville Power Administration's transmission facilities; and the water delivery and return system (consisting of pipelines for industrial water, potable water, sanitary wastewater and industrial wastewater up to the Refinery property limits).
4. "BACT" means Best Available Control Technology
5. "Begin construction" or "Beginning of construction" means the initiation of any actual construction activities at the Site such as form work, rebar, and pouring concrete for the power block structures; and for the electrical transmission line: pouring footings for, or erection of, transmission line structures.
6. "Begin operation", "Beginning of operation", or "Beginning of commercial operation" means the time when the Certificate Holder begins delivering electricity to purchasers under commercial power purchase agreements.
7. "BMPs" means Best Management Practices.
8. "Bonneville" means Bonneville Power Administration.
9. "BP" means BP West Coast Products, LLC.
10. "Certificate Holder" means BP West Coast Products, LLC, or its successor.
11. "Cherry Point Cogeneration Project" or "Project" means the Cogeneration Facility, its associated facilities, the wetlands Compensatory Mitigation Areas, and the Restoration Area. The specific components of the Project are identified in Article I.C.
12. "Cogeneration Facility" or "Facility" means the three natural gas-fired combustion turbine generators with heat recovery steam generators, steam turbine generator, and associated equipment, buildings and structures.
13. "Combustion turbine generator" or "CTG" means a natural gas-fired combustion

turbine configured to drive an electric generator.

14. "Compensatory Plan" means the Final Cogeneration Project Compensatory Mitigation Plan (Compensatory Plan), Appendix H-7 of the Application as revised and submitted to the U.S. Army Corps of Engineers on June 2, 2004.
15. "Corps" means the U.S. Army Corps of Engineers.
16. "County" means Whatcom County, Washington.
17. "Ecology" or "WDOE" means the Washington Department of Ecology.
18. "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.
19. "Ferndale Pipeline" means the existing 16-inch natural gas pipeline extending from the United States -Canada border at Sumas, Washington to the BP Cherry Point Refinery and the Alcoa Intalco aluminum smelter.
20. "First Fire" means the first time natural gas is combusted in the gas turbine generators.
21. "NOC" means Notice of Construction
22. "NPDES permit" means National Pollutant Discharge Elimination System permit.
23. "p.l.c." means public limited company.
24. "PSD" means Prevention of Significant Deterioration.
25. "RCW" means the Revised Code of Washington.
26. "Site" means the property identified in Attachment 1 and Attachment 2, located in the Cherry Point area of unincorporated Whatcom County, on which the Facility is to be constructed and operated, and the wetlands restoration is to occur.
27. "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.
28. "Site Preparation" means any of the following activities: clearing, grading, filling, pre-loading, surcharge fill placement, excavation, and preparation of lay down areas.
29. "Site Release" means the date on which the Engineering, Procurement and Construction contractor is given authorization to proceed with the Project and is

given full access to the Project site.

30. "State" or "state" means the State of Washington.
31. "Steam turbine generator" or "STG" means the condensing steam turbine with an electric generator.
32. "IBC-2003" means the International Building Code of 2003.
33. "WAC" means the Washington Administrative Code.
34. "WDFW" means the Washington Department of Fish and Wildlife.
35. "WDP" or "WD Permit" means Wastewater Disposal permit.
36. "Wetland Compensatory Mitigation Areas," "Compensatory Mitigation Area" or "CMA" means the approximately 110-acre area located north of Grandview Road that has been designated for wetland mitigation, restoration and preservation. The area is more specifically described in Attachment 2.
37. "Wetland Restoration Area" or "Restoration Area" means the approximately 4.86 acres of wetland and 4.41 acres of wetland buffers that will be temporarily impacted by construction activities and equipment laydown and has been designated for wetland restoration.
38. "WSDOT" means the Washington State Department of Transportation.

## ARTICLE III. GENERAL CONDITIONS

### A. Legal Relationship

1. This Agreement shall bind the Certificate Holder, and its successors in interest, and the state and any of its departments, agencies, divisions, bureaus, commissions, boards, and its political subdivisions, subject to all the terms and conditions set forth herein, as to the approval of, and all activities undertaken with respect to, the Project or the Site. The Certificate Holder shall ensure that any activities undertaken with respect to the Project or the site by its agents (including affiliates), contractors, and subcontractors comply with this Agreement. The term "affiliates" includes any other person or entity controlling, controlled by, or under common control of or with the Certificate Holder.
2. This Agreement, which includes those commitments made by the Certificate Holder in the Revised Application (the Revised Application is hereby incorporated by reference), constitutes the whole and complete agreement between the State of Washington and the Certificate Holder, and supersedes any other negotiations, representations, or agreements, either written or oral. This Agreement incorporates the stipulation between BP and the Counsel for the Environment, which is set forth in Attachment 6 to this Agreement, the settlement agreement between BP and Whatcom County, which is set forth in Attachment 7 to this Agreement, as well as the other attachments listed on page 46 of this Agreement.

### 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 pursuant to RCW Chapter 34.05 and RCW Chapter 80.50, for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, for violations of RCW Chapter 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 required to, conduct a hearing pursuant to Chapter 34.05 RCW.

### C. Notices and Filings

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

Notices to be served 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 4519 Grandview Road, Blaine, Washington, 98230.



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

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site, the Facility, Associated Facilities and their respective rights of way, the Wetland Compensatory Mitigation and Restoration Areas, and all records relating to the construction and operation of the Project to designated representatives of EFSEC in the performance of their official duties. Such duties include, but are not limited to, monitoring and inspections to verify the Certificate Holder's compliance with this Agreement.

#### **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**

Any plans required by this Agreement may be consolidated with other such plans, if such consolidation is approved in advance by EFSEC.

#### **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 Chapter 80.50. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.

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

The Certificate Holder is responsible for site restoration pursuant to the Council's rules.

The Certificate Holder shall submit its initial site restoration plan in accordance with the requirements set out in Article IV.A of this Agreement. The Certificate Holder may not begin site preparation until the Council has approved such an initial site restoration plan.

The Certificate Holder shall submit a detailed site restoration plan to EFSEC for approval within twelve (12) months of the termination of the Project. The detailed site restoration plan will provide for restoration of the Site within a reasonable time frame, taking into account the restoration plan and the anticipated future use of the Site.

#### **I. EFSEC Liaison**

Within thirty (30) days of the effective date of this Agreement, the Certificate Holder shall designate a person to act as a liaison between EFSEC and the Certificate Holder.

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

The Certificate Holder shall notify EFSEC of any change in the management of, or responsibilities for, the Cherry Point Cogeneration Project.

## **K. Amendment or Modification of Agreement**

1. This Agreement may be amended pursuant to EFSEC rules and procedures. Any requests by the Certificate Holder for amendments to this Agreement shall be made in writing.
2. A change in ownership of the Project shall be pursuant to EFSEC rules and procedures.
3. 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:
  - a. Any changes in the terms or conditions of Attachment 1 – Site Legal Description, or Attachment 2 – Legal Description of Wetland Mitigation Property and Deed Restrictions for Wetland Mitigation Areas, unless otherwise required by the Council.
  - b. Any changes in the terms and conditions of Attachment 3 -Prevention of Significant Deterioration/Notice of Construction (PSD/NOC) permit, any future PSD/NOC or Title V Air Operating Permit, Attachment 4 National Pollution Discharge Elimination System (NPDES) permit, Attachment 5 –Wastewater Disposal (WD) permit, any future NPDES or WD permits, or this Site Certification Agreement required by federal law or regulations, shall be governed by applicable laws and regulations.
  - c. Any changes in the terms and conditions of Article IV. B – Wetland Compensatory Mitigation Plan shall be governed by applicable laws and regulations, unless otherwise required by the Council.
4. In circumstances where the Project causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement or where such impacts are imminent, EFSEC may impose specific conditions or requirements on the Certificate Holder as a consequence of such a situation in addition to the terms and conditions of this Agreement. Such additional conditions or requirements initially shall be effective for not more than ninety (90) days, and may be extended once for an additional ninety (90) day period if deemed necessary by EFSEC.

## **L. Order of Precedence**

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

1. Applicable federal and State of Washington statutes and regulations;
2. The body of this Site Certification Agreement as amended;

3. Attachment 8, Council Order No. 803, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition, and Council Resolution No. 317, amending this Agreement;
4. Any other provision, term or material incorporated herein by reference or otherwise attached to, or incorporated in, this Site Certification Agreement.

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

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

### **A. Initial Site Restoration Plan**

The Certificate Holder is responsible for site restoration pursuant to Council rules. At least ninety (90) days prior to the beginning of site preparation, the Certificate Holder shall submit to the Council for review and approval an initial site restoration plan.

At a minimum, the initial site restoration plan shall address both the possibility that site restoration occurs at the end of the useful life of the Project and also the possibility of the Project being suspended or terminated during construction. The plan shall comply with WAC 463-42-655 in effect the date of Application and shall also include at least the following components:

1. 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.
2. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.
3. An initial plan for disposing of hazardous materials (if any) present on the site, and remediating hazardous contamination (if any) at the site.
4. An initial plan for restoring the site, including the removal of structures and foundations and the regrading of the site, if appropriate.
5. Provisions for retaining systems owned and operated by Whatcom County and/or any other municipality.
6. Provisions for retaining and protecting wetlands mitigation sites.
7. Provisions for restoration of the electrical transmission line and natural gas pipeline facilities and corridor if applicable.
8. Provisions for preservation of the site and facilities if the Project is suspended or terminated during construction.

Prior to beginning site preparation, the Certification Holder must obtain approval from the Council of the initial site restoration plan. The Certificate Holder shall be required to post a bond to secure site restoration only if, at any time following execution of this Agreement, the Certificate Holder's Standard & Poors credit rating falls below "BBB-/Stable" or its Moody's credit rating falls below "Baa3/Stable," unless another corporate entity with credit rating at least equal to

those levels provides a formal corporate guarantee making that corporate entity jointly liable for site restoration expenses. The Certificate Holder shall notify the Council within 30 days of the changes in credit rating described above, and shall submit to EFSEC a plan for posting the required corporate guarantee or bond to secure site restoration within 60 days of the notification.

## **B. Wetland Compensatory Mitigation Plan**

1. Compensatory Plan Goals: The Certificate Holder shall implement the wetland mitigation plan provided in the Final Cogeneration Project Compensatory Mitigation Plan (Compensatory Plan), Appendix H-7 of the Application as revised and submitted to the U.S. Army Corps of Engineers on June 2, 2004, and any subsequent revisions submitted to, and approved by the Army Corps of Engineers through issuance of the federal Clean Water Act Section 404 permit. The goals of the Compensatory Plan are:
  - a. The restoration of approximately 110 acres of degraded wetlands and surrounding uplands located in two compensatory mitigation areas (CMAs) located north of Grandview Road. CMA1 consists of approximately 50 acres located east of Blaine Road and CMA2 consists of approximately 60 acres located west of Blaine Road. Historic drainage patterns will be restored by rerouting treated stormwater runoff and plugging existing ditches. Non-native invasive plant species, such as reed canary-grass, will be removed and suppressed. Native plant communities will be established.
  - b. The restoration of approximately 4.86 acres of wetland and 4.41 acres of wetland buffers (collectively the "Restoration Area") that will be temporarily impacted by construction activities and equipment laydown. Wetland hydrology will be restored in the 4.86 acres of wetlands. Both wetland and buffer portions of the Restoration Area will be planted with a variety of forested, scrub-shrub and emergent plant communities dominated by native vegetation.
2. Implementation of the Compensatory Plan: The Certificate Holder shall execute the elements of the Compensatory Plan, including but not limited to:
  - a. Conduct the restoration activities in manner to meet or exceed the Performance Standards identified in the Compensatory Plan;
  - b. Develop and Submit to EFSEC an As-Built Report documenting the final grading, hydrologic pathways, and planting schemes, consistent with the requirements of the Compensatory plan.

