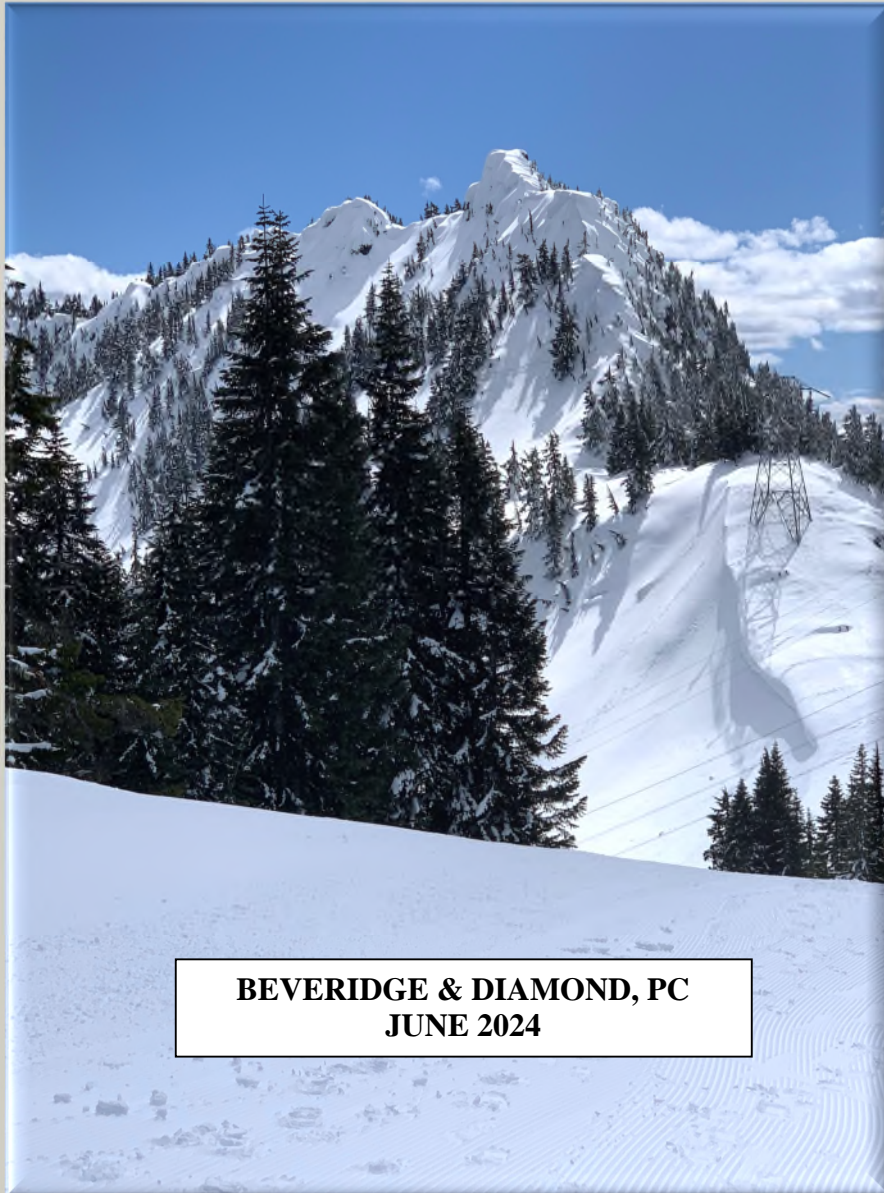


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WASHINGTON:  
A REPORT TO THE WASHINGTON  
DEPARTMENT OF COMMERCE  
UNDER RCW 43.394.020(3)(a)**

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**BEVERIDGE & DIAMOND, PC  
JUNE 2024**

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## EXECUTIVE SUMMARY

Many states, along with the Biden Administration and foreign governments, have adopted ambitious goals to decarbonize their electricity sectors and, in many cases, to decarbonize their entire economies, by mid-century. To reach these goals will require a rapid build-out of new renewable energy generation, electric transmission, and other clean economy infrastructure. A consensus across a broad range of interests and perspectives has now developed that current permitting processes are too slow and unpredictable to permit the needed build-out, undercutting the environmental goals these laws were originally enacted to achieve.

In this report, we have analyzed permitting models from a number of states, the federal government, and the European Union; consulted a variety of experts involved in permitting clean infrastructure; and considered a broad range of studies recommending reforms to permitting processes. This report builds on the [2022 Low-Carbon Energy Project Siting Improvement Report](#), in which the Departments of Commerce and Ecology engaged a broad cross-section of Tribes and stakeholders to develop recommendations for improving siting processes in Washington. We emphasize that our recommendations are process-oriented only. We have not been asked to recommend changes to any of Washington's substantive environmental laws and have not done so.

Based on this investigation, our conclusions and recommendations include the following:

- ***Washington's Permitting Processes Require Significant Reform:*** Permitting in Washington is often too slow and too unpredictable, especially for large renewable generation projects and electric transmission infrastructure that is essential to meet decarbonization goals. Permitting processes are unnecessarily delayed for a number of reasons, but the most important are a lack of specific timelines for completing permitting, lack of clarity about

mitigation and other requirements that might arise during permitting, and uncertainty about how many studies and surveys will be required over what time period.

## **Recommended Reforms**

Based on our investigation, we recommend the following measures to improve permitting processes in Washington:

### ***All permitting processes should:***

- Be adequately staffed, including staff with expertise in project management and community engagement that can keep permitting processes moving forward as efficiently as possible and ensure that involved agencies coordinate their efforts to the greatest extent possible.
- *All SEPA processes should incorporate the following:*<sup>1</sup>
  - The lead agency should be designated within 14 days after receipt of the application.
  - A determination whether the SEPA Checklist is complete should be made within 30 days of submission, and the adequacy of any documents filed to address gaps in the initial Checklist determined within seven days.
  - The determination of significance should be made within 60 days of receipt of the complete SEPA Checklist and the project proponent should be provided the opportunity to revise its plans or propose mitigation that would avoid impacts and thereby avoid a full Environmental Impact Statement (“EIS”).
  - The final EIS should be issued no more than two years after the determination of significance, with shorter periods for projects that have less impact or are subject to a non-project environmental review.
  - Building on the existing process adopted in [HB 1216](#), non-project reviews should be conducted for all clean energy technologies that are expected to be widely deployed in Washington.
  - Issues should be identified to the greatest extent possible in the pre-application and scoping stages and new issues should not be inserted into late-stage processes absent clear justification demonstrating that they could not have been raised earlier.

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<sup>1</sup> Many of these reforms have already been adopted in, for example, HB 1812 or HB 1216. We recommend that they apply in all SEPA processes, not just in, for example, the EFSEC or Consolidated Permitting process.

- The Social Cost of Carbon metric should be used in all SEPA processes where greenhouse gas emissions are an issue.
- *Standardized Mitigation*: Standard mitigation measures should be developed that can be easily adopted by project developers for commonly encountered environmental impacts.
- *Standardized Permits & Categorical Exclusions*: Washington should adopt standardized permits, similar to the nationwide permits recently adopted by the U.S. Fish & Wildlife Service (“USFWS”) for bald and golden eagle protections, that include clear requirements that project proponents can meet to avoid full permitting processes. Similarly, categorical exclusions like those recently [proposed](#) by the U.S. Department of Energy that avoid environmental review processes for common transmission construction that poses little risk to the environment, should be adopted.

***Reforms Involving New or Existing Agencies:***

*Permitting Oversight and Information Clearinghouse*: Washington should have an agency charged with the following functions:

- *Permitting Dashboard*: A permitting dashboard should be created to track the progress of permitting for clean energy infrastructure, which would include a process for all involved agencies to develop a permitting timetable that would be altered only in limited circumstances.
- *Mapping*: Maps and other information relevant to siting should be assembled in one place so that project developers can easily identify the best opportunities for renewable energy development with the least conflicts likely to arise.
- *Least-Conflict Process*: Using existing models, the agency should assemble interested parties to identify areas of agreement concerning where projects should be sited without threats to protected resources.
- *Renewable Energy Zones*: Based on the least-conflict process, non-project environmental reviews required by HB 1216, and other relevant information, Renewable Energy Zones should be established where renewable energy development should be concentrated based on quality of renewable resources and low likelihood of permitting conflicts.
- *Technical Assistance*: Technical assistance would be provided to Tribes, local agencies, and overburdened communities to help them manage permitting processes, understand renewable technologies (especially novel technologies), and identify workable mitigation measures.

- *Pre-Application Roundtable:* The agency would convene all interested parties, affected local and state agencies, and the project proponent in a pre-application process to identify all issues that could create conflict and to develop agreed mitigation strategies.
- *Community Benefits:* Working with the Tribes, underrepresented and overburdened communities, organizations representing those communities, and the Environmental Justice Council, the agency would develop a set of standard community benefits agreements and labor agreements that could be adopted by project developers to ensure environmental justice goals are met as efficiently as possible.
- *EFSEC Reforms:* In addition to recent reforms, these additional reforms should be adopted:
  - *Clear Standard for Approval:* The Energy Facility Siting Evaluation Council’s (“EFSEC”) governing statute should be amended to provide clear direction that EFSEC must approve projects if they meet relevant standards for protection of the environment, historical and cultural resources, and provide sufficient benefits to local and overburdened communities.
  - *EFSEC Decisionmakers:* EFSEC decisions should be made by a three-member panel of individuals with relevant knowledge and experience, who are appointed by the Governor and approved by the Senate, and who are specifically assigned the duty of determining whether a project should be recommended for approval based on the standard specified in the previous bullet point.
  - *Technology-Specific Standards:* EFSEC should adopt technology-specific requirements that wind, solar and other renewable technologies must meet to qualify for permits and permits should be granted if these standards are met.
  - *Mediation:* EFSEC should employ mediation and other informal mechanisms to settle disputes to avoid expensive and time-consuming formal adjudications and its governing statute should be amended to facilitate this goal.
- *Local Government Reforms:* Legislation should be adopted to:
  - *Standard Conditions:* Set specific setbacks and other standards for renewable energy development that the local government could adopt or ease, but could not make more restrictive.
  - *Limit Moratoria:* Local governments would not be permitted to enact moratoria barring renewable energy development for those technologies with mitigation measures specified by statute. Nor would they be permitted to “move the goalposts” on regulatory requirements.



- *Standard Regulation:* Local governments would be permitted to require permits, impact fees, and other ordinary development regulations, but these could not place unique burdens on renewable energy or clean infrastructure projects.
- *Washington Renewable Energy Authority:* A new authority should be created that would:
  - *Transmission:* Be empowered to work with state and federal agencies, Tribes, and planning bodies to identify high-priority transmission corridors in Washington, particularly corridors necessary to connect Renewable Energy Zones with population centers, and to obtain property rights and permits necessary to construct transmission. Transmission rights would then be sold to utilities or developers.
  - *Renewable Energy Permitting:* Be authorized to obtain permits for renewable energy development, focusing on brownfields, degraded lands, and government lands. Once all permits are obtained, the authority would sell “build-ready” projects (that is, sites with all permits and land rights secured, so that construction can begin immediately) to utilities or developers.

## **BACKGROUND: GOALS AND LEGISLATIVE MANDATE FOR THIS REPORT, HOW IT WAS PREPARED AND HOW IT RELATES TO WASHINGTON’S CLIMATE MANDATES**

### **A. Study Goals**

A recent report from the Bipartisan Policy Center summed up the emerging consensus on permitting reform issues:

There is growing understanding that an unnecessarily slow environmental review process produces worse environmental outcomes, rather than better. America’s current permitting process helps to lock-in the status quo of energy infrastructure by hamstringing new development and improvements. With drastic scaleup of clean energy technologies needed, reforming the permitting process can align both the desire for improved environmental outcomes and energy sector growth by unlocking a wave of more sustainable project development. This approach requires recognizing that some historical arguments against permitting reform need to be reconsidered, while also acknowledging the importance of a clear, transparent review process for projects to ensure safety.<sup>2</sup>

The report aptly describes Washington’s current permitting dilemma. Washington has adopted aggressive greenhouse gas (“GHG”) reduction goals that will require large expansions

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<sup>2</sup> X. Fishman *et al.*, [Finding the Goldilocks Zone: A Synthesis Report Based on Seven Roundtable Discussions](#), at 2 (Bipartisan Policy Center, January 2024).

of infrastructure to support a decarbonized economy, including new renewable energy resources, a substantially expanded electric transmission system, the construction of industrial facilities to produce sustainable aviation fuel, energy conservation equipment, equipment to support electric vehicles and renewable energy generation, and facilities to treat and recycle these products when they reach the end of their useful life.

But recent experience demonstrates that Washington’s processes for permitting this infrastructure in many cases are unpredictable, expensive, and can take many years, creating a major barrier to this needed investment. A recent example is the Horse Heaven Clean Energy Center, a combined solar-wind-battery storage project that would, if approved, be Washington’s largest source of carbon-free power. It took EFSEC more than three years to process the application for the Horse Heaven project from the time a final application was submitted until EFSEC’s recent recommendation to approve a substantially scaled down project. EFSEC’s recommendation was recently rejected by Governor Inslee and sent back to EFSEC, so final resolution of the application may still take another 90 days, plus whatever time is needed to resolve any resulting litigation.

Reflecting on this experience, the founder and CEO of Scout Clean Energy, the sponsor of the Horse Heaven project, stated publicly: “It’s just too risky to invest in Washington.”<sup>3</sup> Similarly, one representative of an independent renewable energy developer we interviewed described industry participants as “terrified” of investing in electric transmission infrastructure given that proposals for new transmission infrastructure almost always result in local opposition and that recent high-profile transmission projects in the region have taken from 12 to 20 years to

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<sup>3</sup> See Conrad Swanson, [How An Endangered Hawk Could Topple Plans for Washington’s Largest Wind Farm](#), Seattle Times, Feb. 21, 2024.

fully permit.<sup>4</sup> Given the level of investment needed to meet Washington’s decarbonization goals, policymakers should be concerned that energy developers have reached these conclusions.

The aim of this study is to recommend reforms to the permitting process that will reassure investors by creating a process that is more predictable and less time-consuming, while not compromising Washington’s laws protecting the environment, public health, cultural resources, and other protected values. The Bipartisan Policy Center calls this the “Goldilocks Zone” of permitting reform, in which the environment, public health, cultural resources, and overburdened communities are adequately protected, but permitting processes are not so burdensome as to slow needed investment in green energy and infrastructure. Accordingly, this study identifies the challenges with Washington’s permitting processes that are causing unnecessary delays, expense and unpredictability, and recommends improvements in these processes based on permitting reforms that the federal government, other state governments, and the European Union have enacted.

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<sup>4</sup> The Boardman-to-Hemingway transmission project, which will connect a substation located near Hemingway Butte in southwest Idaho to a substation near Boardman, Oregon, and would help carry renewable energy from Idaho into Oregon and Washington, will take twenty years to permit and construct. The need for the line was first identified in 2006 and final litigation over the project’s permits was recently settled and a final permit was issued. The project’s in-service date is now anticipated in 2026. See [B2H History - Idaho Power](#). Puget Sound Energy’s Energize Eastside project took twelve years to permit, largely because of determined opposition from property owners along the Energize Eastside route, even though it is a relatively modest project, involving construction of a single substation and upgrades to 16 miles of an existing transmission line. See <https://energizeeastside.com/>.

## **B. Study Background**

### **1. Legislative Mandate**

This report is prepared at the direction of the Washington Legislature, which, in 2023, directed the newly formed Interagency Clean Energy Siting Coordination Council (“ICESCC”) to:

(a) Advise the department of commerce in:

(i) Contracting with an external, independent third party to:

(A) Carry out an evaluation of state agency siting and permitting processes for clean energy projects and related federal and state regulatory requirements, including the energy facility site evaluation council permitting process authorized in chapter 80.50 RCW;

(B) Identify successful models used in other states for the siting and permitting of projects similar to clean energy projects, including local and state government programs to prepare build ready clean energy sites; and

(C) Develop recommendations for improving these processes, including potential policy changes and funding, with the goal of more efficient, effective siting of clean energy projects; and

(ii) Reporting on the evaluation and recommendations in (a)(i) of this subsection to the governor and the legislature by July 1, 2024.<sup>5</sup>

The Washington Departments of Commerce (“Commerce”) and Ecology in 2022 jointly prepared a report, entitled Low-Carbon Energy Project Siting Improvement Report (“Low-Carbon Siting Report”),<sup>6</sup> which is the starting point for this study. The Commerce-Ecology report was based on consultation with industry, local governments, Native American Tribes, and

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<sup>5</sup> RCW 43.394.020(3)(a).

<sup>6</sup> Shorelands and Environmental Assistance Program, Washington Department of Ecology and Energy Division, Washington Department of Commerce, [Low-Carbon Energy Project Siting Improvement Report: Report and Recommendations for Improving Siting and Permitting of Industrial Clean Energy Facilities](#), Publication No. 22-06-013 (Nov. 2022).

other interested parties, and sets forth a series of recommendations for improvement of the siting process from a variety of perspectives.

Commerce is also preparing studies on renewable energy development in Washington's rural areas<sup>7</sup> and on a planning and evaluation process for potential offshore wind development off Washington's coast.<sup>8</sup> We therefore touch only lightly on those subjects.

For purposes of this report, we used the term "clean energy projects" as it was defined in [House Bill 1216](#). The Legislature broadly defined "clean energy projects" to include clean energy product manufacturing facilities, electrical transmission facilities, facilities to produce non-emitting electric generation or electric generation from renewable resources, energy storage facilities, biofuel and biomass facilities, facilities to produce sustainable aviation fuel, and facilities that manufacture products used in clean energy facilities or energy conservation, facilities that produce semiconductors, and projects or facility upgrades undertaken by emissions-intensive, trade-exposed industries to reduce greenhouse gas emissions. We suggest that the Legislature consider broadening this definition to include other types of facilities that are likely to be necessary in a decarbonized economy, including, for example, carbon sequestration projects and end-of-life facilities such as EV battery recycling plants. In addition, it would be useful to include a catch-all for technologies that produce significant reductions in greenhouse gas emissions GHGs over standard industrial processes so that technologies that are not yet fully developed can in the future benefit from HB 1216's Consolidated Permitting Process.

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<sup>7</sup> The report is mandated by Section 307 of HB 1216 and is due by December 1, 2024.

<sup>8</sup> The Department of Commerce issued a Request for [Proposals](#) to develop recommendations for a planning and evaluation process for offshore wind projects in October 2023.

## **2. How This Report Was Developed**

Commerce contracted with Beveridge & Diamond, PC (“B&D”), a national environmental law firm, to provide the report mandated by the Legislature. Established 50 years ago by pioneers in the then-emerging field of environmental law, B&D is the nation’s leading environmental law firm. B&D assists clients to comply with the full range of local, state, federal and international environmental laws. It assists a broad range of private companies and government agencies to obtain the permits required to construct major projects, including clean energy projects such as utility-scale battery storage projects and sustainable aviation fuel production facilities. B&D also assists these clients to navigate the nation’s complex system of energy regulation to, for example, obtain rights to transmission service on the nation’s high-voltage grid, to obtain approvals necessary to construct energy facilities on federal lands, and to comply with the rapidly evolving world of climate law. B&D’s Seattle office, opened in 2017, features several of the region’s leading practitioners in energy and environmental law.

In cooperation with Commerce, B&D agreed to develop this report using the following resources:

- B&D practitioners from around the United States who helped identify permitting practices from state governments, the federal government, and certain foreign governments, that have substantially improved the speed and efficiency of permitting, particularly for clean energy resources.
- Starting with the recommendations contained in the Low-Carbon Siting Report, review relevant studies and policy papers to identify problems with existing permitting processes and reforms that may overcome these problems.
- Interview renewable energy developers, environmental advocates, renewable energy advocates, permitting professionals, regulators, and think tank experts to identify preferred approaches to permitting.
- Describe relevant federal laws, including laws that constrain action by the State of Washington and those that can be harnessed to advanced decarbonization of Washington’s economy.

- Review the relevant permitting laws and approaches from other jurisdictions and identify particular features that can be adapted to Washington’s permitting process to improve the speed and efficiency of permitting while honoring commitments to environmental protection, environmental justice, and tribal treaty rights.
- Share drafts with relevant state agencies and take comments from those agencies into account.
- Identify a set of recommended best practices for permitting in Washington.

**C. Washington’s Aggressive Climate Goals: Rapid Development of Carbon-Free Resources Is Essential to Meet These Goals**

Over the last two decades, the State of Washington has adopted increasingly aggressive goals for reducing the state’s GHG emissions and has adopted legislation that sets GHG limits, and requires substantial reductions in GHG emissions, across all sectors of the economy. Specifically, Washington has enacted statutory limits to reduce its statewide GHG emissions by 95% over 1990 levels by 2050. For the electricity sector, Washington law mandates carbon neutrality by 2030, with a carbon-free grid by 2045.<sup>9</sup> The Legislature has mandated that the Utilities & Transportation Commission (“UTC”), Commerce, EFSEC, Ecology and all other state agencies “must incorporate” Washington’s goal of 100% clean electricity into “all relevant planning” and must “utilize all programs authorized by statute” to achieve the 100% clean goal.<sup>10</sup>

Currently, electricity consumed in Washington comes primarily from hydroelectric power (about 54%), with smaller but significant contributions from natural gas (10%), coal (8.6%),<sup>11</sup> wind (8%), and nuclear (4%), and smaller contributions from solar, biomass and other renewable resources, with nearly 13% from “unspecified” market purchases.<sup>12</sup> To replace retiring fossil-fired generation and to meet this expected new demand will require huge investments in new

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<sup>9</sup> We describe the most important Washington statutes addressing climate issues in Appendix A.

<sup>10</sup> RCW 19.405.050(4),

<sup>11</sup> Washington’s last coal-fired plant, Unit 2 of the Centralia generation plant is set to retire at the end of 2025.

<sup>12</sup> See <https://www.commerce.wa.gov/growing-the-economy/energy/fuel-mix-disclosure/>.

renewable energy. Transmission resources will need to be added to Washington’s energy portfolio to meet these expected increases in electricity demand while at the same time meeting decarbonization goals.

To achieve these goals will require a major expansion of Washington’s renewable energy generation fleet and transmission infrastructure. Washington’s 2021 State Energy Strategy (“SES”)<sup>13</sup> notes that GHG emissions from transportation accounts for 45% of the state’s GHG emissions, while emissions from buildings accounts for 23%, and electricity production accounts for only 16%. The SES contemplates that electrification will be a one of the most important strategies to reduce GHG emissions from both transportation and buildings. The SES projects that these new demands, combined with ordinarily-expected increases in electricity demand, will result in increased electricity demand of 13 to 20% over 2020 levels by 2030, and 92% over 2020 levels by 2050.

Recent trends suggest that the SES may well have underestimated future demands. In May 2024, a regional industry forecast projected that electricity demand will increase from about 23,700 average megawatts (aMW) in 2024 to about 31,100 aMW in 2033, an increase of 7,400 aMW, or over 30% in the next 10 years.<sup>14</sup> This is a substantial increase in the forecast from only one year ago, which projected demand to increase by 24% in 10 years.<sup>15</sup> Other recent reports agree that current projections may well underestimate future needs because of growing electricity

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<sup>13</sup> <https://www.commerce.wa.gov/growing-the-economy/energy/2021-state-energy-strategy/>.

<sup>14</sup> Pacific Northwest Utilities Conference Committee, [Northwest Regional Forecast of Power Loads and Resources: August 2024 through July 2034](#) (May 2024).

<sup>15</sup> *Id.*

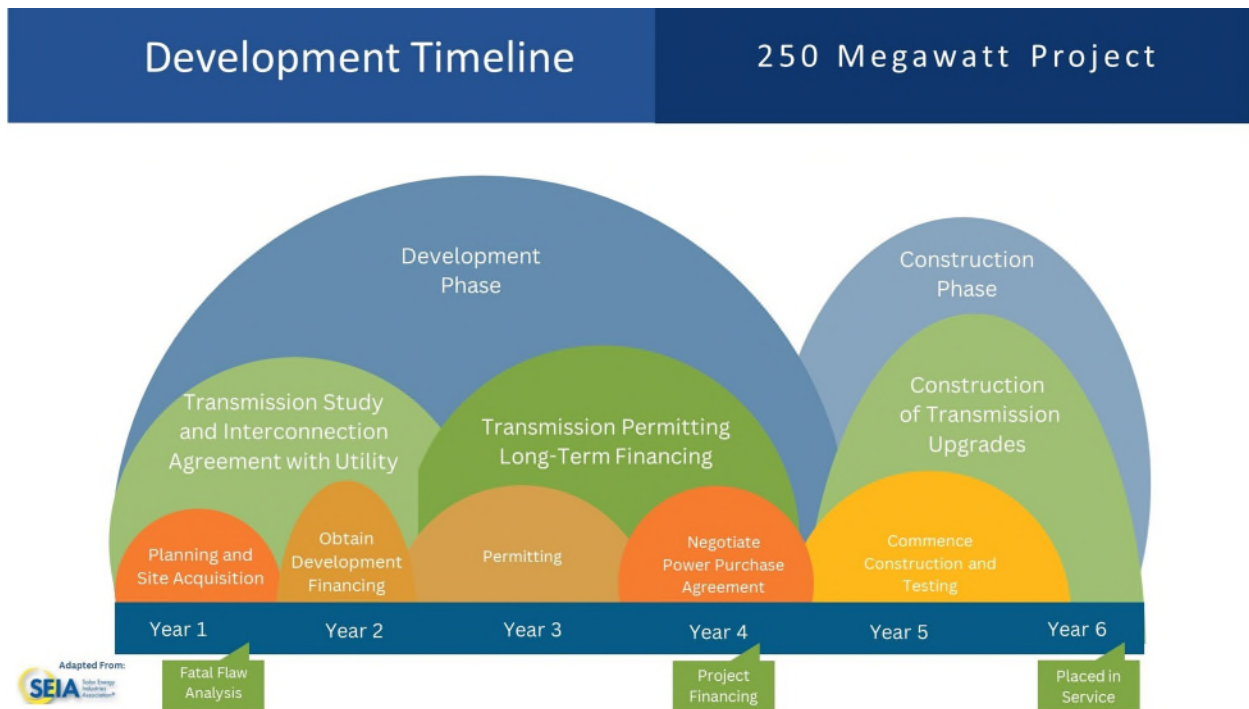


demand from data centers, especially those used to support artificial intelligence, and hydrogen fuel facilities, as well as from electrification efforts.<sup>16</sup>

**PERMITTING CLEAN ENERGY INFRASTRUCTURE IN WASHINGTON TODAY**

**A. The Project Development Cycle and Attracting Capital Investment in the Clean Economy**

Sound permitting reform should recognize the myriad difficulties developers of renewable energy projects face, and how permitting processes that cause undue delay and uncertainty can create a serious drag on development. Accordingly, we provide a brief description of the process for developing a typical utility-scale renewable energy generation facility. The following graphic, from the Solar Energy Industries Association, shows a typical project development timeline for a utility-scale solar project:



<sup>16</sup> *Id.*; Electric Power Research Institute, White Paper, [Powering Intelligence: Analyzing Artificial Intelligence and Data Center Energy Consumption](#) (May 2024); J. Wilson & Z. Zimmerman, [The Era of Flat Power Demand is Over](#), Grid Strategies at 3 (Dec. 2023).

We note that other types of clean energy projects face many, but not all, of the same difficulties.

Projects not involving energy generation, for example, generally do not need to obtain transmission interconnections:

- *Locating Economic Resources:* To develop an economic project, a developer must first locate areas with sun, wind, geothermal or other renewable resources that can, with reasonable assurance, be developed economically. Generally, at least one year of meteorological readings from a specific site are necessary to provide assurance that available renewable resources are productive enough to ensure an economical project. In addition, the proposed facility generally must be located near existing electric transmission lines. It can be extremely expensive – often \$1 million per mile or more – to construct high-voltage lines, so a project that is otherwise economically viable may not be able to support construction of a long tie line to connect with the existing transmission system.
- *Land Rights:* Once a site with renewable resources that can be developed economically is identified with sufficient certainty, the project developer must obtain rights to use the land. On private lands, this generally requires the developer to pay for options that can be exercised once permits and financing are obtained. On public lands, development rights generally require the developer go through a lengthy process requiring extensive environmental reviews and may also involve competitive bidding on leases or other lengthy and, at times, expensive administrative processes.
- *Power Purchase Agreement:* A project will not be viable until the developer obtains a commitment from an electricity buyer to purchase the power produced by the project. In Washington, because utilities in almost all cases control access to retail markets, the developer must obtain a contract to sell power to a utility.<sup>17</sup> Often, this requires winning a competitive bidding process that requires the project developer to have obtained land rights, have made substantial progress in obtaining transmission rights, and have most or all permits necessary to develop the project in place.
- *Transmission Rights:* To move power from the generator to the purchaser, it is necessary for the project developer to obtain rights to transmit power over the nation's electric transmission grid. To transmit power on the interstate grid, the developer must file an interconnection application with the transmission utility or utilities that will move its power. With rapidly growing demand for renewable energy resources in recent years, the interconnection process is not functioning efficiently. Projects must now wait a national average of approximately five years to make it through the study process triggered by an interconnection request and to successfully interconnect with the transmission grid,<sup>18</sup> and

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<sup>17</sup> See Appendix C discussing utility regulation in Washington.

<sup>18</sup> E.g., J. Rand *et al.*, Lawrence Berkeley National Laboratory, [Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection As of the End of 2022](#) (April 2023).

delays have recently gotten worse.<sup>19</sup> The Federal Energy Regulatory Commission (“FERC”) is actively addressing these problems, both through reforms of the interconnection process and through transmission planning reform. But even if these are successful, it will likely take several years to see tangible results.<sup>20</sup>

- *Transmission Permitting:* When an energy project developer applies for rights to transmit power on the electric grid, its application triggers a series of engineering studies that identify any upgrades needed on the transmission system to accommodate the power that would be produced by the developer’s project, as well as equipment necessary to reliably move power from the generator to the point of interconnection with the existing grid. Generally, the new generation facility cannot start generating power, or may generate only at reduced capacity, until these upgrades and interconnection equipment are installed. While the upgrades and protective equipment are required to meet mandatory reliability standards, permitting those facilities is generally within the purview of state and local governments. Delays in permitting necessary transmission facilities therefore can substantially delay interconnection of new renewable generators, adding delays on top of the already lengthy transmission study process. This process is discussed in more detail in Appendix C.
- *Equipment, Engineering, and Construction Contracts:* With growing demand for wind turbines, solar cells, and other key equipment, project developers often must get in factory queues for such equipment, which may require that they order the equipment months or even years in advance. Similarly, experts with the specialized knowledge necessary to design renewable generators and necessary supporting facilities like substations, switchyards, and interconnection facilities, are in high demand, and a project developer may have to get in line to obtain these services.
- *Financing:* While financing for renewable energy projects is now available from many financial institutions, these institutions generally require the power purchase agreement, land rights, equipment and engineering contracts, transmission rights, as well as all necessary permits to be in place to ensure repayment of financing.

Because financial institutions are reluctant to loan money to a project before everything necessary to assure repayment of the loan is in place, the project developer usually must fund the whole range of upfront work necessary to get all land and contractual rights, power purchase agreements, transmission rights, and required permits in place. This process can take years and

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<sup>19</sup> J. Rand *et al.*, Lawrence Berkeley National Laboratory, [Queued Up: 2024 Edition, Characteristics of Power Plants Seeking Transmission Interconnection As of the End of 2023](#) (April 2024).

<sup>20</sup> FERC’s transmission reform efforts are addressed in greater detail in Appendix C.

cost tens of millions of dollars, even more for a large project or a project with particular technical challenges, like offshore wind.

Unforeseen permitting delays or other complications, such as unanticipated permit conditions that force significant reductions in a project's capacity, can add substantial costs to this process, sometimes enough to kill an otherwise viable project. A recent study by the Lawrence Berkeley National Laboratory found that about one-third of wind and solar projects for which applications were submitted in the last five years were cancelled, and about half experienced delays of six months or more. Average sunk costs for cancelled projects were about \$7.5 million for wind projects and \$2.5 million for solar projects, and project delays cost about \$200,000 per megawatt ("MW") for both wind and solar. The leading causes of cancellations were local opposition, local ordinances and zoning, and problems obtaining grid interconnection.<sup>21</sup>

In most cases, interconnection and transmission is a federal matter and, as noted above, Washington can influence the speed of interconnection only by speeding up the permitting of transmission upgrades that may be required for new projects to interconnect, and by participating in transmission planning processes. On the other hand, many of the project developers we interviewed identified the permitting process as the greatest source of uncertainty in project development, and unforeseeable delays in permitting as one of the chief factors determining whether a project can be built or fails before the development process is complete. Because permitting, including permitting of transmission projects, is generally a state or local function, Washington policy makers can make a substantial difference in expedited construction of clean

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<sup>21</sup> R. Nilson *et al.*, Lawrence Berkeley National Laboratory, [Survey of Utility-Scale Wind and Solar Developers](#) (Jan. 2024).

energy projects by improving the speed and predictability of siting and permitting processes for these projects.

## **B. Key Permitting Issues**

Project developers must comply with a broad range of environmental laws requiring study of environmental impacts, protection of public resources like air and water, wildlife conservation, and preservation of historical and archaeological resources, summarized in Appendix B. Certain types of projects must comply with additional regulatory regimes aimed at ensuring safe aviation, navigation, fire safety, or other specific values. For example, wind energy developers must ensure that wind towers are marked with lights complying with Federal Aviation Administration (“FAA”) requirements, and that they do not interfere with radar or other flight operations of the U.S. military. Developers of hydroelectric projects must obtain a FERC license under Part I of the Federal Power Act, which is intended to ensure that hydroelectric developments do not interfere with river navigation, are part of a plan to optimize development of river systems, and otherwise comply with applicable environmental laws.<sup>22</sup>

Environmental analysis in nearly every case is a critical concern for project developers. The federal National Environmental Policy Act (“NEPA”) was intended to incorporate environmental considerations into all aspects of federal administrative processes.<sup>23</sup> The most important provision of NEPA requires federal agencies to prepare a full EIS if a proposed federal action has a “reasonably foreseeable significant effect on the quality of the human environment.”<sup>24</sup> Preparation of an EIS often takes months or years and may encompass hundreds or even thousands of pages of analysis, although recent federal legislation, discussed below, has

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<sup>22</sup> Federal Power Act Part I requirements are summarized in Appendix C.

<sup>23</sup> See generally U.S. Environmental Protection Agency, [Summary of the National Environmental Policy Act](#).

<sup>24</sup> 42 USC § 4336 (b)(1).

imposed both time and page limits in EISs. An Environmental Assessment (“EA”) is required if the federal action “does not have a reasonably foreseeable significant effect on the quality of the human environment.” EAs are generally more concise than EISs and less time-consuming to develop. Finally, Categorical Exclusions are available for actions that agency concludes, after following the required administrative process, that are not ordinarily expected to have a significant environmental impact.<sup>25</sup>

Washington has adopted a state analogue to NEPA, the State Environmental Policy Act (“SEPA”).<sup>26</sup> SEPA extends the requirement for agencies to consider the environmental consequences of their decisions to all state and local agencies in Washington. Hence, SEPA applies to any permitting process in Washington, whether state or local. Like NEPA, SEPA requires a full EIS for agency decisions anticipated to have significant environmental impacts. A “Determination of Non-Significance” (“DNS”) may be issued for projects that are not expected to have significant environmental impacts, and a “Mitigated Determination of Non-Significance” (“MDNS”) may be issued for projects that have mitigated their environmental impacts so that they are not expected to be significant. SEPA also allows for Categorical Exclusions for specific types of agency actions not expected to have significant environmental impacts. One important innovation adopted under SEPA is the [“SEPA Checklist,”](#) a form document that spells out all of the different impacts a project sponsor should consider and document that are considered for permitting under Washington law. Most permitting specialists consider the SEPA Checklist to be an important and useful tool for preparing a project application.

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<sup>25</sup> 42 U.S.C. § 4336c.

<sup>26</sup> RCW Chapter 43.21C. *See generally* Department of Ecology, [State Environmental Policy Act](#).

Twenty-nine federally recognized Native American Tribes have traditional homelands and reservations in Washington. Under the Stevens Treaties, these Tribes have usufructuary rights for fishing, hunting, and gathering on their usual and accustomed territories outside reservation lands. In addition, several other Tribes have interests in Washington that may be affected by permitting processes in this state. Tribes play a critical role in permitting processes, as described in greater detail in Appendix D. In addition, millions of acres of land in Washington are set aside as designated Wilderness or National Parks or are subject to regulation by federal and state agencies like the U.S. Forest Service or the Washington Department of Natural Resources (“DNR”), summarized in Appendix E.

This report does not propose changes to any of these substantive laws. Rather, we recommend procedural changes to improve the process of permitting. The proposed reforms are based on what we have heard from the many entities we have interviewed for this study, what we have read in the many studies and white papers we have reviewed, which represent multiple perspectives, including project developers, environmental groups, trade groups, permitting experts, and attorneys with deep experience in energy project development. The consensus among these informed observers is that, while some siting and permitting processes work well, too often these processes are unnecessarily unpredictable, expensive, and time-consuming.

For the reasons we now discuss, these criticisms apply to varying degrees whether a project developer elects to go through the EFSEC process or through the local permitting processes. Whichever process is chosen, developers can face years-long delays with uncertain outcomes, as we now explain in more detail. Developers now have a third option, the Ecology’s new “Coordinated Clean Energy Permit Process.” Because it is so new, Ecology is still

developing regulations for the process and there is not yet a track record to judge how effective this process is at reducing unnecessary permitting barriers.

## **C. The EFSEC Process**

### **1. Background**

In 1970, fearing that the region was bumping up against the limits of its vast hydroelectric system, urgent construction of new nuclear and coal-fired plants was thought to be needed to meet anticipated electricity demand. In response, the Legislature created EFSEC, then known as the “Thermal Power Plant Site Evaluation Council.”<sup>27</sup> EFSEC was empowered to permit thermal power plants with a capacity of 250 MW or more. In 2001, the Legislature added provisions allowing the developers of renewable energy projects of any size to seek EFSEC approval as an alternative to going through the local permitting process. Over the years, EFSEC’s mandate has been broadened to include authority to permit electric transmission lines, natural gas and petroleum pipelines, and, more recently, emerging technologies like green electrolytic hydrogen and biogas facilities as well as clean energy product manufacturing facilities.

EFSEC is intended to provide a centralized permitting process that balances the statewide need for abundant, affordable energy, environmental protection, and local concerns. EFSEC is composed of representatives of a number of state agencies with interests in energy development or environmental protection, and also includes, on a case-by-case basis, local officials from the area where a project is proposed.

Applicants seeking EFSEC approval must pay a \$50,000 deposit (potentially more) to cover costs that arise during the process. The application must also provide technical studies,

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<sup>27</sup> 1970 Wash. Laws Chapter 45 (1<sup>st</sup> Exec. Sess.).



biological studies, historical resource studies and other information to allow EFSEC to make an informed decision. An applicant may request a pre-application review, in which case EFSEC staff must review the applicant's draft application and provide comments on additional studies, or stakeholder or Tribal input, that should be included in a final application.<sup>28</sup>

When an application is received, EFSEC must notify a variety of potential stakeholders, including legislators representing the city and county where the project would be located, the department of archaeology and historical preservation, and potentially affected Tribes. EFSEC must conduct an informational public hearing within 60 days of receiving the application at a location as close as is practical to the proposed site. After this hearing, EFSEC is required to conduct another public hearing to determine whether the proposed site is consistent with local land use plans or zoning ordinances, although the informational public hearing and the land use consistency hearings are often held simultaneously.

Once this process is complete, EFSEC must, within 12 months, formally recommend to the Governor that the proposed project be approved or rejected, although this one-year deadline is often extended to permit, for example, completion of environmental analyses or site surveys, especially with large projects. If EFSEC recommends that a project be approved, it must submit a draft certification agreement that specifies the terms and conditions of construction and operation of the facility. The governor has 60 days from receipt of EFSEC's recommendation to 1) approve the application and execute the draft agreement, 2) reject the application, or 3) direct EFSEC to reconsider certain aspects of the draft certification agreement. If a project is certified by the Governor, it greenlights the project. Certification binds the state, its agencies, and political

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<sup>28</sup> RCW 80.50.340, .380. The Legislature has provided for a specific pre-application process for electric transmission facilities which requires EFSEC to consider electric transmission corridors designated by other agencies. RCW 80.50.330.

subdivisions as to the approval of the site and construction and operation of the proposed energy facility. The Governor’s final decision is subject to judicial review under the Administrative Procedure Act, with expedited appeal directly to the Washington Supreme Court available.

If a project can demonstrate that it is without significant environmental impacts, or that those impacts are mitigated to a non-significant level and the project is consistent with local land use regulations, the project is eligible for expedited processing by EFSEC.<sup>29</sup>

EFSEC may preempt local rules. Initially, it must determine whether or not the proposed site is “consistent and in compliance with city, county, or regional land use plans or zoning ordinances on the date of the application.”<sup>30</sup> But EFSEC is authorized to preempt local laws.<sup>31</sup> If it does so, it must “include conditions in the draft certification agreement to implement the provisions of this chapter including, but not limited to, conditions to protect state, local governmental, or community interests, or overburdened communities . . . , and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder.”<sup>32</sup>

## **2. HB 1812, Modernizing the EFSEC Process**

In 2022, Governor Inslee signed into law [House Bill 1812](#), which amended EFSEC’s governing statute in several important ways:

- The list of facilities eligible for the EFSEC process was expanded to include “clean energy product manufacturing facilities,” defined broadly to include facilities that manufacture products used for clean energy facilities, charging and other infrastructure related to electric vehicles, and facilities for the production of green electrolytic hydrogen (hydrogen without a fossil fuel feedstock). The bill also expanded the list of energy projects eligible for the EFSEC process to include renewable natural gas and energy storage facilities.

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<sup>29</sup> RCW 809.50.075; WAC 463-43-070.

<sup>30</sup> RCW 80.50.090(2).

<sup>31</sup> RCW 80.50.110(2); WAC 463-28-030, -080.

<sup>32</sup> RCW 80.50.100(2).

- Electric transmission projects eligible for the EFSEC process were expanded to include any electric line with a capacity of 115 kV or greater that will cross two or more jurisdictions with land use plans or zoning ordinances, eliminating the previous requirement that the transmission line could not be in an existing transmission corridor.
- The requirements for EFSEC to consult with state and local government agencies and with federally recognized Tribes is spelled out in some detail, especially for Tribal consultations.
- The composition of EFSEC council members was changed modestly, and the EFSEC chair was empowered to hire a staff director, and the director was empowered to hire additional professional and administrative staff. EFSEC's power to hire consultants was also expanded. In addition, EFSEC was formally separated from the Utilities and Transportation Commission.
- The provision allowing expedited treatment for projects with no significant environmental impacts was modified so that a project proponent seeking such treatment will be notified if EFSEC preliminarily determines that the project is not eligible for expedited treatment and will be given the opportunity to revise its proposal to qualify for expedited treatment.

### 3. Criticisms of EFSEC

We have heard several consistent criticisms of EFSEC from a broad spectrum of project developers, industry trade groups, and environmental organizations. The primary criticisms are:

- *Lengthy and Unnecessary Delays*: Recent applications, especially for large projects, have taken three years or more from the time a final application is submitted for the EFSEC process to be completed. The process is often considerably longer if pre-application consultations and preliminary project work are considered. For example, the proposed Horse Heaven Hills project began on-site wildlife surveys in 2016 and has been involved in consultations with state and federal agencies and Tribes since February 2017.<sup>33</sup> EFSEC's final recommendation to the Governor to approve the project, with conditions that will reduce its capacity by at least half, were delivered to Gov. Inslee on April 29, 2024,<sup>34</sup> more than three years after the final application was submitted and more than seven years after pre-application consultation processes were started. On May 23, 2024, Governor Inslee rejected EFSEC's recommendation and directed the agency to reconsider the conditions it imposed on its recommendation for approval within 90 days.<sup>35</sup> Delays are attributed to several factors, including repeated requests for information on environmental or other conditions from project developers (often involving lengthy delays to collect the

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<sup>33</sup> See [Scout Clean Energy Application for EFSEC Site Certification](#), at Table 1.12-1 p. 1-57 (Feb. 2021).

<sup>34</sup> [Report to the Governor on Application Docket No. EF 220011](#) (April 29, 2024).

<sup>35</sup> See [Letter from Governor Inslee re Horse Heaven Wind Farm Project EFSEC Recommendation](#).

required information), time-consuming formal adjudication processes, overstretched staff, and lack of project oversight such as agreed deadlines for agency review of project applications. In addition, many of those we interviewed asserted that there is a lack of clear guidance from the involved agencies concerning protocols and expectations for field surveys and environmental studies, which contributes to the process of repeated demands for information and lengthens the timeline for the site certification process.

The chart below summarizes the length of the EFSEC process for renewable energy projects over the last several years:<sup>36</sup>

Project Name	Pre-Application Activities	Proposed Capacity	Application	Approved Capacity	Recommendation to Governor
Badger Mountain Solar <sup>37</sup>	2019	200 MW	October 5, 2021	TBD	TBD
Carriger Solar <sup>38</sup>	2020	160 MW solar 63 MW battery	February 20, 2023	TBD	TBD
Columbia Solar <sup>39</sup>	2017	25 MW	October 16, 2017	25 MW	August 21, 2018
Desert Claim Wind Power Project <sup>40</sup>	2002	180 MW (revised to 190 MW and finally 100 MW)	November 3, 2006 Revised January 29, 2009	190 MW	December 4, 2009
Goose Prairie Solar <sup>41</sup>	2019	80 MW	January 19, 2021	80 MW	October 19, 2021
High Top and Ostrea Solar Project <sup>42</sup>	2020	80 MW each	April 7, 2022	80 MW each	February 17, 2023
Hop Hill Solar <sup>43</sup>	2021	500 MW solar 500 MW battery	December 22, 2022	TBD	TBD

<sup>36</sup> We understand that EFSEC has recently adopted a standardized application for solar projects, which may help explain why recent solar projects have generally been approved within one year or less of the final application. However, we were unable to locate sufficient information to evaluate this program.

<sup>37</sup> See [Badger Mountain Solar Energy Project Application for Site Certification](#).

<sup>38</sup> See [Carriger Solar Project Application for Site Certification](#).

<sup>39</sup> See [Columbia Solar Projects Washington EFSEC Application for Site Certification](#); [Report to the Governor on Application No. 2017-01](#).

<sup>40</sup> See [Desert Claim Wind Power Project Application for Site Certification](#); [Desert Claim Wind Power Project Revised Application](#); [Desert Claim Wind Power Project – Recommendation of Approval](#).

<sup>41</sup> See [Goose Prairie Solar Application for Site Certificate](#); [Goose Prairie Solar Revised Application for Site Certificate](#); [Report to the Governor on Application No. 2021-01](#).

<sup>42</sup> See [High Top and Ostrea Application](#); [Report to the Governor on Application No. EF-220212](#).

<sup>43</sup> See [Application for Site Certification Hop Hill Solar and Storage Project](#).

Horse Heaven Wind Project <sup>44</sup>	2016	1,150 MW	February 8, 2021	Estimated ~50% reduction <sup>45</sup>	April 29, 2024
Kittitas Valley Wind Power Project <sup>46</sup>	2002	200 MW	January 12, 2003	97.5 – 195 MW	May 2, 2007
Wallula Gap Solar Project <sup>47</sup>	2021	60 MW	February 23, 2024	TBD	TBD
Wautoma Solar Energy Project <sup>48</sup>	2021	470 MW solar 470 MW battery	May 20, 2022	TBD	TBD
Whistling Ridge Energy Project <sup>49</sup>	2003	75 MW (50 turbines)	March 10, 2009	Limited to 35 turbines	January 4, 2012
Wild Horse Wind Power Project <sup>50</sup>	2002	312 MW	March 8, 2004	273 MW wind 500 kW solar	May 25, 2005

- *Lack of Coordination in Process:* Project developers and permitting experts we interviewed asserted that EFSEC lacks expertise in project management, with the result that project reviews by different agencies are often uncoordinated, contributing to unnecessary delays. HB 1812 authorizes EFSEC to acquire new staff and EFSEC has been emphasizing employees with project management skills, and the agency reports that it has hired eight new staff with such expertise.
- *Lack of Expertise and Staff:* While agency personnel who participate in the EFSEC process generally have deep expertise related to the agency’s mission (for example, Washington Department of Fish and Wildlife (“WDFW”) personnel tend to have deep expertise in wildlife conservation issues), many developers we interviewed criticized the departmental representatives who participate in the EFSEC process for having limited expertise in energy project development.<sup>51</sup> In addition, EFSEC has had insufficient staff to keep the application process moving expeditiously. One interviewee expressed concern that the shortage of staff may be exacerbated by the Legislature’s recent expansion of projects eligible for EFSEC consideration in HB

<sup>44</sup> See [Scout Clean Energy Application for EFSEC Site Certification](#); [Report to the Governor on Application Docket No. EF-220011](#).

<sup>45</sup> Governor Inslee remanded to EFSEC to reconsider limitations placed on the project. See [Letter from Governor Inslee re Horse Heaven Wind Farm Project EFSEC Recommendation](#).

<sup>46</sup> See [Application for Site Certification for the Kittitas Valley Wind Power Project](#); [Kittitas Valley Wind Power Project – Recommendation of Approval](#).

<sup>47</sup> See [Wallula Gap Solar Project Application for Site Certification](#).

<sup>48</sup> See [Wautoma Solar Energy Project Application for Site Certification](#).

<sup>49</sup> See [Whistling Ridge Energy Project Application for Site Certification](#); [Whistling Ridge Energy, LLC – Recommendation Package for Approval](#).

<sup>50</sup> See [Wild Horse Wind Power Project EFSEC Application](#); [Wild Horse Wind Power Project Special Meeting](#).

<sup>51</sup> In EFSEC’s early years, agency representatives were expected to have significant energy expertise and were also expected to act independently of their agency.

1812, although HB 1812, as noted, authorizes EFSEC to add staff and it has been doing so.

- *Lack of Mechanism to Balance Interests:* The governing statute directs EFSEC to “report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months” of receipt of an application for certification, but provides little or no binding guidance as to what applicants must demonstrate to receive a recommendation for approval.<sup>52</sup> Further, as a council of agency designees, EFSEC may provide an efficient venue to resolve each agency's individual concerns and requirements based on its own mission and priorities, but it is ill-suited to evaluate projects relative to overarching state policies, including the state's climate and clean energy requirements. The EFSEC Council is composed of representatives from Ecology, WDFW, Commerce, the UTC, and DNR, and the substantive analyses of EFSEC applications are performed by these agencies (primarily Ecology and WDFW), along with the Department of Archaeological and Historical Preservation (“DAHP”). Because these agencies are mission-driven, they tend to recommend conditions on certification that maximize protection for, for example, wildlife species, while failing to consider the extent to which these conditions would hinder clean energy project development, either in a particular case or in the wider context. This view was expressed universally by the developers, trade groups, and permit specialists we interviewed.

The treatment of mitigation measures for ferruginous hawks included in EFSEC’s recommendations for the Horse Heaven project illustrate the problem. At the outset, it should be noted that the ferruginous hawk has been listed as “endangered” in Washington and the species has experienced precipitous declines in the state over the last three decades, primarily due to the loss of sage-steppe habitat to agricultural development and sprawling urban development, as well as habitat loss in the Great Plains and other habitat areas outside Washington, where the birds spend the majority of their time.<sup>53</sup> But the species as a whole is not endangered. The Cornell Lab of Ornithology rates the species as of “low conservation concern,” noting that its overall population increased approximately 1% per year from 1996 through 2019 based on the results of the North American Breeding Bird Survey.

Although WDFW has identified loss of sage-steppe habitat loss as the primary culprit for the decline of ferruginous hawks in our state, EFSEC missed the opportunity to directly address that problem by requiring Horse Heaven to mitigate its impacts by preserving or restoring sage-steppe habitat. Instead, at WDFW’s recommendation, EFSEC imposed a 2-mile buffer around all ferruginous hawk nests, even though no

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<sup>52</sup> RCW 80.50.100. The statute’s statement of legislative intent, set forth at RCW 80.50.010, states that the Legislature intends EFSEC to “balance” demands for clean energy against “the broad interests of the public” based on a list of six “premises.” Statements of legislative intent are generally viewed as precatory, and, while a useful guide to interpreting a statute if it is ambiguous, do not create binding obligations on an agency. Even if it were binding, the “balancing” language in RCW 80.50.010 provides little assurance that, if a project developer avoids or adequately mitigates environmental impacts, its project will be approved.

<sup>53</sup> See G. Hayes & J. Watson, WDFW, [Periodic Status Review for the Ferruginous Hawk](#) (Aug. 2021).

active nests have been identified in the project area since 2019 and, sadly, the record suggests that, because of habitat loss, they are unlikely to be used again. If this condition had been approved by Governor Inslee, it would have forced the Horse Heaven project to reduce its proposed capacity by 50% or more.<sup>54</sup> The two-mile buffer is more restrictive than those imposed by other agencies managing ferruginous hawk habitat, notably including the U.S. Fish & Wildlife Service, which recommend setbacks of 0.5 to 1 mile for active nests.<sup>55</sup> The area restricted under the WDFW’s 2-mile buffer is about sixteen times larger than the 0.5-mile buffer and about four times the size of the 1 mile buffer.

EFSEC could have adopted mitigation measures that would have resulted in less drastic reductions in project capacity but likely would have been at least as effective in protecting ferruginous hawks. For example, rather than simply barring any development within a two-mile radius of hawk nests, EFSEC could have required monitoring of nests and adaptive management if any of those nests are occupied in the future. If the nest is used, the project operator could be required to shut down wind turbines within a reasonable radius of the nest until the hawks have fledged and migrated. Generally, this would occur in the spring when wind turbines are often scheduled for maintenance anyway, and this would allow the turbines to produce when hawks are absent in Washington and when nests are not occupied. As Governor Inslee concluded, “[t]he outright prohibition of turbine locations should be replaced with mitigation in the form of operational conditions that allow for build-out of the vast majority of the proposed Project.” The far more extreme approach taken by EFSEC, however, will force a drastic reduction in renewable energy capacity with, at best, marginal benefits to ferruginous hawks.

The EFSEC statute assigns EFSEC’s director administrative authority only, and there is no structural mechanism for balancing conditions recommended by the agencies involved in the process against the state’s overarching goals for developing clean energy projects. To put it another way, EFSEC lacks a mechanism to balance the state’s interest in expanding clean energy projects against the project’s impacts on wildlife, aesthetics, and other resources. Because urgent action is needed to avoid the worst effects of climate change, including damage to Washington’s environment and wildlife, the lack of an effective balancing mechanism could result in counter-productive decision-making, causing EFSEC to reject projects that would have a net positive impact on Washington’s natural resources when their effects on climate stabilization, along with required mitigation measures, are taken into account.

- *Lack of Predictability:* The EFSEC process is generally centered around developing an extensive environmental analysis, without particularized parameters to guide avoidance of environmental impacts, mitigation, or limits on how much information

<sup>54</sup> See Conrad Swanson, [Plans for WA’s Largest Wind Farm Slashed in Half](#), Seattle Times, April 17, 2024.

<sup>55</sup> See, e.g., Laura A. Romin and James A. Muck, [Utah Field Office Guidelines for Raptor Protection From Human and Land Use Disturbances](#), Table 2 at 29 (Jan. 2002); U.S. Fish and Wildlife Service, [Region 6 Wildlife Buffer Recommendations for Wind Energy Projects](#) at 1 (Mar. 31, 2021); Wyoming Ecological Services Field Office, [Protections for Raptors](#), Table 1 at 5 at (Mar. 9, 2022).

must be provided. As a result, even after agency concerns are identified in the pre-application process and project developers design their projects to avoid identified impacts, it is difficult for project developers to predict what additional concerns will be identified, what additional studies or surveys will be demanded, what level of mitigation will be required, and whether changes to the project to address these concerns will render the project uneconomic. Developers we interviewed also asserted that agencies often “move the goalposts” by relying on guidance or other documents that have not been published, subject to agency review, or peer review by scientists. These documents sometimes appear well after an application has been received and accepted by EFSEC, adding substantial uncertainty to the process.

#### **D. Local Permitting Processes and Criticisms**

In Washington, counties and cities have permitting and regulatory authority for activities within their jurisdictions. Historically, renewable energy projects were permitted at the local level, with EFSEC as an alternative process, generally relied upon by developers facing barriers to project approval at the local level or approvals across multiple jurisdictions.

Although specifics vary by jurisdiction, counties, cities and towns generally regulate development, including energy development, under the following legal regimes:

##### **1. Growth Management Act**

The Growth Management Act (“GMA”) is the primary statutory framework for local land use planning and development in Washington.<sup>56</sup> The GMA identifies fifteen non-prioritized goals, which are sometimes in tension, to guide local land use plans and development regulations.<sup>57</sup> The GMA also requires 29 fast-growing cities and counties to adopt comprehensive plans to ensure those cities and counties will be able to effectively provide urban services, infrastructure, water and other resources to accommodate projected population growth.<sup>58</sup>

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<sup>56</sup> RCW 36.70A

<sup>57</sup> RCW 36.70A.020.

<sup>58</sup> RCW 36.70A.210.



The plans must contain elements of, for example, land use, housing, capital facilities, rural development for counties, transportation, and climate change and resiliency.<sup>59</sup> Optional elements include economic development, parks and recreation, conservation, solar energy, subarea plans, and ports.<sup>60</sup> Cities and counties must periodically review these plans and revise them if necessary. The 2024 Legislature adopted legislation requiring climate mitigation, including reduction of GHG emissions, to be added as a mandatory element of comprehensive plans.<sup>61</sup>

In addition, all cities and counties must designate natural resource lands and adopt regulations governing the use of these lands. Cities and counties must also adopt critical area regulations. The GMA defines five types of critical areas: (1) wetlands; (2) critical groundwater recharging areas that may impact aquifers used for potable water; (3) frequently flooded areas; (4) geologically hazardous areas; and (5) fish and wildlife habitat conservation areas. The function of these areas must be protected using the best available science.<sup>62</sup>

Policies developed under the GMA can have substantial impacts on clean energy project development and, like any other type of development, clean energy projects can have substantial local impacts. For example, buffers around critical areas generally preclude development or at least require potentially expensive mitigation measures. Similarly, comprehensive plans may result in restrictions on clean energy development in areas that are zoned to preclude such development. Often, clean energy projects can be developed only with a conditional use permit, which requires the project developer to apply for a permit from the relevant county or city. Some counties do not have zones that allow for renewable energy development, so that such

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<sup>59</sup> RCW 36.70A.070.

<sup>60</sup> RCW 36.70A.080, .085.

<sup>61</sup> [SB 6140](#) (effective June 6, 2024).

<sup>62</sup> RCW 36.70A.170; RCW 36.70A.172

development is possible only with a zoning change. Generally, this requires the developer to seek approval from EFSEC as the only practicable alternative.

Except for certain project-level disputes that are resolved by the Superior Courts under the Land Use Petition Act,<sup>63</sup> the Growth Management Hearings Board resolves disputes under the GMA, including disputes about the adequacy of SEPA analyses connected with zoning or permitting decisions under the GMA. The GMA provides the governor with authority to impose sanctions on cities, counties, and state agencies that do not comply with the GMA as determined by the Growth Management Hearings Board.<sup>64</sup>

## **2. Shoreline Management Act**

The Shoreline Management Act (“SMA”)<sup>65</sup> works similarly to the GMA. It requires all 39 Washington Counties and about 250 cities and towns to develop Shoreline Master Programs that comply with the SMA’s mandates. Those mandates require localities to develop and adopt Shoreline Master Programs to regulate development on shorelines, which includes lakes, rivers, streams with more than 20 cubic feet per second of flow, wetlands, and floodplains, along with lands 200 feet shoreward of these water bodies. The SMA also mandates protection of “shorelines of statewide significance,” which includes Puget Sound, Hood Canal, the state’s large rivers and lakes, and associated wetlands. Restrictions arising under the SMA can limit clean energy projects within the buffer zones and also may limit development of clean energy projects relying on, for example, small hydroelectric dams or tidal energy.

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<sup>63</sup> RCW 36.70C.

<sup>64</sup> RCW 36.70A.340-.345.

<sup>65</sup> RCW Chapter 90.58.

### **3. Police Powers and Zoning**

In addition to the requirements of the GMA and SMA, local governments possess their own police powers, which are exercised in a variety of ways that may impact development of renewable energy resources. For example, city and county governments frequently require major projects to address impacts on traffic, roads, schools, and generally require building permits and grading permits for any construction activity.

For developers seeking a project permit, zoning is the most important exercise of these police powers. Zoning is a tool of local police power authority that implements the community's vision of how it should develop. In communities that fully plan under the GMA, zoning and other development regulations are subordinate to the comprehensive plan and implement local land use policies it contains. Each jurisdiction in Washington has its own county, city, or municipal code. These codes impose regulations on subjects such as land use, building and construction, environmental protection and historic preservation, and may provide zoning maps.<sup>66</sup>

Planning and zoning can impact where clean energy project development may occur and, where allowed, a special use permit is generally required, creating the consequences discussed above. And, like any construction project, a clean energy project will have to pay impact fees and address impacts on traffic, schools, and other local interests.

### **4. Criticisms of Local Permitting Processes**

Local opposition to renewable energy is growing nationwide, placing many areas of the country entirely off limits to renewable energy development and creating permitting barriers,

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<sup>66</sup> See e.g., Seattle Municipal Code, available at [https://library.municode.com/wa/seattle/codes/municipal\\_code](https://library.municode.com/wa/seattle/codes/municipal_code). County and city codes and other relevant information is available on the website of the Municipal Research and Services Center at <https://mrsc.org/>

delay and expense for developers seeking to expand the nation's supply of carbon-free power. An increasing number of localities, and at least two states, have made renewable energy development off limits in their jurisdictions.<sup>67</sup> Local opposition unchecked by any countervailing emphasis given to statewide and nationwide goals for renewable energy development has become a major impediment to the achieving the nation's decarbonization goals.<sup>68</sup>

Local opposition has become a major barrier to renewable energy development in at least some Washington localities and in the EFSEC process, as well. These problems are not universal. We have heard from many developers that Washington counties and cities have successfully permitted some renewable energy projects with little delay or unnecessary burden. Further, local permitting processes are generally faster and less burdensome than the EFSEC process. In addition, local processes, if done well, can lead to reasonable accommodations of local concerns while allowing renewable project development to proceed at the pace needed to meet decarbonization goals.

However, significant problems can arise in local permitting processes, often with little warning. Among tactics that are strongly criticized by project proponents are:

- *Unpredictable Moratoria*: After a project application is received by a local government, that government enacts a moratorium of uncertain duration, placing the project in limbo and potentially killing it through delay.<sup>69</sup> Project developers and permit specialists we interviewed cited several examples of this occurring both in Washington and in neighboring states. Columbia University's Sabin Center on Climate Change Law recently

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<sup>67</sup> A recent USA Today article includes an interactive map showing graphically the rapid rise of local restrictions on renewable energy development. [US Counties are Blocking the Future of Renewable Energy: These Maps, Graphics Show How](#), USA Today (Feb. 4, 2024, updated Feb. 27, 2024).

<sup>68</sup> See, e.g. M. Eisenson, Sabin Center for Climate Change Law, Columbia Law School, [Opposition to Renewable Energy Facilities in the United States](#) (May 2023 Ed.); I. Ko et al., [Rural Backlash Could Impede Climate Ambition](#), Univ. of Penn. Regulatory Review (Jan. 22, 2024).

<sup>69</sup> Counties and cities are permitted to enact moratoria for up to six months subject to public hearing. Moratoria can be extended to one year if a work plan is developed for studying the issue given rise to the moratorium. A moratorium can be extended for additional six-month periods subject to public hearing and appropriate findings of fact. RCW 35A.63.200; RCW 36.70A.390.

identified moratoria that have been imposed on solar development in Klickitat, Grant, Kittitas, and Yakima Counties.<sup>70</sup>

- *Unreasonable conditions:* Localities have attempted to place large zones off-limits to clean energy project development in the name of protecting, for example, farmlands and critical areas, with little heed either to statewide decarbonization goals or mitigation strategies that could avoid or minimize impacts to those areas. For example, one Pacific Northwest county imposed seven-mile buffer zones around multiple areas of concern, effectively making the county off-limits to renewable energy development. While the individual we interviewed did not identify the specific county referred to, we believe this likely refers to Douglas County, which adopted ordinances requiring energy generation facilities to “be located at least 7 miles from” urban growth boundaries, town or city limits, or the boundaries of local airports, and from “habitat associated with sensitive, candidate, threatened or endangered plants or wildlife as identified on state and federal lists.”<sup>71</sup>
- *Lack of Information:* Local governments and local citizens often lack information about renewable energy developments, especially those involving new technologies like utility-scale battery storage. For local governments, the reaction can be to take drastic actions like placing moratoria on specific types of development as a means of ensuring that lack of information does not create unintended consequences for the local community. For local citizens, lack of information may lead to uninformed opposition, unnecessary delays in permitting, political pressure on officials to deny permits that they would otherwise approve, and litigation with little or no basis. For example, persistent rumors, apparently gleaned from internet conspiracy sites, suggesting that solar panels leach huge amounts of toxic chemicals have repeatedly appeared in solar energy permitting processes our firm has been involved with, despite reams of scientific evidence demonstrating that this concern is without basis. Lack of information can also lead to over-reaction when there is legitimate cause for concern. For example, utility-scale battery storage facilities, at least using certain batteries chemistries, present unique fire hazards. But the generally-accepted solution<sup>72</sup> is to install protective firewalls and other protective equipment, to provide communications devices that alert plant operators and fire department personnel if hazardous conditions develop, and, if the local fire department lacks necessary training or equipment, providing funding for that training and equipment. An outright ban on these facilities, on the other hand, undermines electric reliability and grid resiliency for everyone.
- *Public Participation Plans.* Some but not all localities lack well-developed public participation policies, which can complicate permitting processes. Without a specific

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<sup>70</sup> M. Eisenson *et al.*, [Opposition to Renewable Energy in the United States: June 2024 Edition](#), Sabin Center for Climate Change Law (June 2024).

<sup>71</sup> DCC 18.16.355(B)–(C). These restrictions were addressed in EFSEC’s [Land Use Inconsistency Order](#) concerning the Badger Mountain Solar Project. Order Finding Project Inconsistent With Local Land Use Regulations, EFSEC Docket No. EF-210747, Order No. 881 (issued March 13, 2022).

<sup>72</sup> We note that Washington follows the International Fire Code. WAC 51-54A-003. [Section 1207 of the International Fire Code](#) addresses fire hazards for electric energy storage systems.

policy in place, developers are sometimes left to develop a process for notifying potentially affected parties with little guidance from the relevant governing body, which can lead to unnecessary distrust, opposition that arises late in the process, and even litigation over public notice requirements. In addition, one of the advantages of local processes repeatedly noted by developers we interviewed is that it helps developers identify community concerns and to develop appropriate mitigation measures and community benefits agreements. These processes can be unnecessarily complicated if a well-developed public participation plan is not in place.

- *Local Benefits.* While local communities should reasonably expect to benefit from development in their communities, there is little standardization of how community benefits are provided by developers. There is also concern that overly generous payments to individuals or communities impacted by project development will result in higher electric rates to consumers, which undercuts Legislative goals favoring least-cost energy planning, as well as undermining efforts to reduce energy burdens on disadvantaged communities.

One example of an extremely drawn out local permitting process is Puget Sound Energy's [Energize Eastside](#) transmission project. Although the project involved relatively modest upgrades – a single substation and upgrades to about 16 miles of transmission lines – the project required Conditional Land Use permits from four different cities and a SEPA process that took nearly three years. Altogether, obtaining the necessary permits took twelve years and the project is only now beginning construction. As noted, HB 1812 provided an option for transmission projects involving lines of 115 kV or more and passing through more than one jurisdiction with land use or zoning ordinances to go through the EFSEC process rather than local processes, so an effective EFSEC process offers hope of a shorter and more predictable permitting process.

#### **E. The Consolidated Permitting Process**

The Legislature is cognizant that delays and inefficiencies in permitting imperil its ambitious goals for addressing climate change. In response to these concerns, it has recently adopted major legislation aimed at addressing permitting problems, including SB 1812, discussed above, and several other bills, discussed in Appendix H. Of most importance, in 2023,

the Legislature adopted [HB 1216](#), which creates a new coordinated permitting process for “clean energy projects,” defined broadly as discussed above.

The Coordinated Permitting Process<sup>73</sup> is voluntary process available to clean energy projects that do not seek EFSEC approval. Ecology acts as the central point of contact using the following process:

- *Initial Assessment:* Ecology must, within 60 days of receiving a request for treatment under the coordinated permitting process, conduct an initial assessment of the state and local permits required for approval of the proposed project, the information anticipated to be required, the level of anticipated SEPA review and the estimated time required for that review, and inform the applicant in writing of these determinations.
- *Application:* Following receipt of the initial assessment, a project proponent may submit an application to participate in the coordinated permitting process, which must include a detailed description of the proposed project, information on proposed mitigation measures, a description of the proponent’s efforts to engage with Tribes, local governments, and overburdened communities. If Ecology determines that the project “raises complex coordination, permit processing, or substantive permit review issues,” the project may be processed under the coordinated permitting process.
- *Work Plan:* Within 30 days of receiving a complete application that is eligible for the coordinated permitting process (or longer if agreed upon with the project proponent), Ecology must, in consultation with the project proponent, local government, and permitting agencies, develop a schedule for permit processing, and invite relevant federal agencies and Tribes to participate. Once the permitting schedule is complete, Ecology publishes the permitting process schedule, shares it with the project proponent, participating state agencies, the SEPA lead agency, participating cities and counties, and the public. Thereafter, if any agency is unable to meet a timeline in the work plan, it must notify Ecology and Ecology may amend the timeline or otherwise propose a solution to the delay.
- *Coordination and Acceleration of Permitting:* When a clean energy project is eligible for the coordinated permitting process, local governments are required to enter into an agreement with Ecology or the project proponent to expedite the permitting process and the project proponent must enter into a development agreement with the local government. Ecology must also facilitate in-depth consultations with Tribes and with state agencies with permitting responsibilities.

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<sup>73</sup> See Ecology’s Clean Energy Coordinated Permitting Process page: <https://ecology.wa.gov/regulations-permits/sepa/clean-energy/clean-energy-coordinated-permit-process#:~:text=Ecology%20has%20established%20a%20new,agencies%20may%20also%20be%20involved..>

Other notable provisions of HB 1216 include:

- *Nonproject Reviews:* HB 1216 requires Ecology to prepare nonproject environmental impact statements (equivalent to a “programmatic EIS” under NEPA) for three types of clean energy projects, including projects with battery energy storage: green electrolytic or renewable hydrogen projects, utility-scale solar energy projects, and onshore utility-scale wind projects. The nonproject environmental impact statements are to consider issues common to developments of the specified types of renewable energy projects, including historic and cultural resources, protected species, landscape scale habitat connectivity and wildlife migration corridors, environmental justice and overburdened communities, cultural resources relevant to tribal rights, land uses, and military installations and operations. The scope of the nonproject reviews is to be developed by Ecology in collaboration with stakeholders, including Tribes. Clean energy project proposals that follow the recommendations of nonproject environmental reviews will be required to conduct environmental analyses only with respect to project-specific impacts and not to the general impacts address in the non-project reviews.
- *Opportunity to Revise Application:* After the applicant for a clean energy project submits the SEPA checklist, the lead SEPA agency provides an anticipated determination of significance and opportunity for the applicant to withdraw and revise the checklist so that the applicant might obtain an MDNS or DNS. If the lead agency determines that an EIS is required, it has 24 months to prepare the final EIS from the time of that determination. The time limit may be extended if the applicant agrees.
- *Renewable Energy Zones:* Based in part on the results of the nonproject environmental reviews, the ICESCC must recommend to the Legislature and Governor areas to designate as “clean energy preferred zones,” and to recommend regulatory, tax, environmental, and other benefits that should accrue to projects in these zones.
- *Demonstration of Need:* Prohibits local governments from requiring a demonstration of need for clean energy projects, although the applicant may be required to submit documentation from FERC, the UTC, or another relevant agency supporting the need for the project. Notably, several interviewees identified local requirements to demonstrate need for a project to be problematic for clean energy projects.
- *Meteorological Equipment:* Bars local governments from prohibiting the installation of wind and solar resource evaluation equipment necessary for the design and environmental planning of a renewable energy projects.
- *Pumped Storage:* Directs Washington State University’s energy program to carry out a process to identify issues and interests that may affect the siting of pumped storage projects. This is important because pumped storage is the only technology currently available to store electricity over a time horizon longer than several hours.



## **F. The HEAL Act: Environmental Justice in Washington**

In 2021, Washington enacted the Healthy Environment for All Act (“HEAL Act”). The HEAL Act aims to “reduce environmental and health disparities in Washington state and improve the health of all Washington state residents,” and particularly to address communities of color and low-income communities that bear a disproportionate share of environmental burdens. For purposes of this report, the HEAL Act is important because it creates an additional layer of review and a new set of considerations that must be addressed in the permitting process.

The HEAL Act contains six key elements:

- Certain Washington agencies, generally those with significant permitting or other responsibilities related to overburdened communities, must incorporate environmental justice goals into decision-making. Other agencies may adopt those goals voluntarily.
- Agencies must develop equitable community engagement and public participation plans that incorporate overburdened communities into the decision-making process.
- Agencies must conduct environmental justice assessments when considering significant agency actions.
- The Environmental Justice Council (“EJC”) is created and tasked with advising agencies on incorporating environmental justice principles into agency activities.
- Agencies are required to consult with federally-recognized Tribes.
- Environmental justice principles must be incorporated into agency budgeting processes.

The starting point for environmental justice analysis is the Environmental Health Disparities map, a tool developed jointly by several Washington agencies, the University of Washington, and public interest advocates.<sup>74</sup> The HEAL Act provides funding to keep the Environmental Health Disparities Map up to date.

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<sup>74</sup> See <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>.

## **G. Tribal Consultations**

Tribal consultations are a point of concern for project developers, state agencies, and the Tribes themselves. Project developers and permitting consultants have expressed frustration in finding the correct contacts for Tribes, and in Tribal issues often surfacing late in the permitting process. State agencies share similar concerns, and also are concerned that, under the [Centennial Accord](#), many Tribes reasonably expect consultations to take place between the Tribe and the Governor, which complicates agency consultation processes. Finally, there has been a surge of interest in recent years for developing renewable energy projects on Tribal lands. Although recent legislation mandated Tribal consultations in permitting and other processes, the mechanics and timing of consultations remains problematic in many cases.

### **MODELS FOR REFORM FROM OTHER JURISDICTIONS**

We have reviewed siting laws from a number of other jurisdictions, including the European Union, the U.S. federal government, and many states. We summarize below permitting regimes that we believe should serve as models for Washington’s permitting reform efforts. The states were chosen primarily because they face the same dilemma as Washington—they have adopted aggressive decarbonization mandates, all requiring decarbonization of their state economies by mid-century, but have realized that existing permitting practices create barriers to constructing the infrastructure necessary to achieve these goals. We also include an example of a reform that has failed, Ohio’s SB 52.

#### **A. Federal Permitting Reforms**

##### **1. FAST 41 and the Federal Permitting Improvement Steering Council**

###### **a. Background**

Enacted on December 4, 2015, the Fixing America’s Surface Transportation Act (“FAST Act”) created the FAST-41 process and the Federal Permitting Improvement Steering Council

(“FPISC”) for project oversight.<sup>75</sup> FAST-41 intends to improve early consultation and coordination among government agencies, increase transparency through the publication of project-specific timetables with completion dates for all federal authorizations and environmental reviews, and increase accountability through consultation and reporting on projects. FPISC has representatives from fifteen federal agencies.

FAST-41 coverage provides project developers with a comprehensive, integrated federal permitting timetable publicly posted on the federal infrastructure permitting dashboard. FAST-41 requires that agencies establish and maintain timetables and consult with the project developer on any timing changes.

Projects eligible for FAST-41 treatment include:

- Projects in one of eighteen “covered project” sectors<sup>76</sup> that are (1) subject to NEPA; (2) likely to require a total investment of more than \$200 million; and (3) do not qualify for an “abbreviated authorization or environmental review process” under an applicable law.
- Projects FPISC elects to cover, which must be: (1) subject to NEPA; and (2) of a size and complexity that makes it, in the opinion of FPISC, likely to benefit from enhanced oversight and coordination.
- Tribal-developed projects that are within one of the eighteen covered project sectors and are subject to NEPA, but the project need not meet the \$200 million threshold.
- Infrastructure to support carbon capture and sequestration projects.

#### **b. FAST-41 Timeline**

The accelerated and monitored timeline is core to the FAST-41 program. A project developer submits the notice of a proposed FAST-41 “covered project” to the FPISC executive

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<sup>75</sup> Full text of the FAST Act is available [here](#).

<sup>76</sup> “Covered project” sectors are renewable energy production, conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, mining, carbon capture, semiconductors, artificial intelligence and machine learning, high-performance computer and advanced computer hardware and software, quantum information science and technology, data storage and data management, and cybersecurity.

director and facilitating agency. The executive director must add this project to the permitting dashboard within 14 days of receipt unless the facilitating/NEPA lead agency determines the project does not qualify. The facilitating agency must identify all federal and non-federal agencies likely to have any review, financing, or permitting responsibility for the project and invite them to participate within 21 days of the dashboard posting. A lead agency for NEPA purposes must be identified within 60 days. States may opt in to participate in the FAST-41 process.

The lead agency must establish a comprehensive permitting timetable based on the executive director's recommended performance schedule that includes intermediate and final completion dates for action on all federal environmental reviews and authorizations to begin construction.<sup>77</sup> This timetable requires cooperating agency concurrence and the FPISC executive director and Office of Management and Budget resolve timetable disputes. FPISC posts the permitting timetable on the dashboard in accordance with interagency and project developer consultation and public disclosure requirements.

The FPISC executive director administers the timetable, including processing extension requests and resolving interagency and developer issues. Agencies seeking to extend an agreed-upon deadline must seek approval for the extension from FPSIC at least thirty days prior to the deadline, which encourages agencies to carefully manage timelines. There is no specific deadline in FAST-41 for final agency action, although the publication of timelines in the dashboard encourages timely agency action and has provided Congress with clear information about permitting timelines. These publications have informed a number of amendments to FAST-41 since it was initially adopted.

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<sup>77</sup> The Permitting Dashboard can be found at <https://www.permits.performance.gov/>.

## **2. Regulatory and Permitting Information Desktop Toolkit**

The United States Department of Energy (“DOE”) developed the Regulatory and Permitting Information Desktop (“RAPID”) toolkit to provide permitting information, best practices, and reference material for renewable energy and bulk transmission project development.<sup>78</sup> The toolkit makes regulatory and permitting information accessible from a single location by providing an overall analysis of the permitting process, centralized contact information for federal and state regulators, best practice information, reference material, and links to permit applications, manuals, and related information.

Of note, as part of the RAPID Toolkit, the FPISC has identified best practices for effectively permitting renewable energy and bulk transmission projects.<sup>79</sup> These practices include coordinating permitting for the projects, developing landscape-scale mitigation plans, drafting memorandums of understanding (“MOU”) for interstate transmission siting, online permitting systems, public involvement, purpose and need statements, and general tips.

## **3. Federal NEPA Reform**

Congress included NEPA reforms in the Fiscal Responsibility Act, passed in late May 2023. The new statute largely codifies practices that have been developed since NEPA’s adoption in 1969, including a requirement that a lead agency be designated where two or more federal agencies are involved.

The new statute also imposed two important requirements. First, EISs are required to be completed within 2 years after an agency determines that a proposed federal action will have significant environmental impacts. Second, environmental assessments (“EA”) and EISs are

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<sup>78</sup> The toolkit can be found at <https://openei.org/wiki/RAPID>.

<sup>79</sup> Available at [https://openei.org/wiki/RAPID/Best\\_Practices?technology=Transmission](https://openei.org/wiki/RAPID/Best_Practices?technology=Transmission).

limited to 75 and 150 pages, respectively, plus appendices, with limited exceptions for complex projects.<sup>80</sup>

#### **4. Nationwide Permits under the Bald and Golden Eagle Protection Act**

The FWS recently published a final rule creating general permits under the Bald and Golden Eagle Protection Act (“BGEPA”) authorizing incidental take of eagles associated with the operation of wind farms, power lines, and other activities. The FWS issues incidental take permits upon the project applicant’s demonstration that eligible projects and power lines pose a low risk of eagle take.

For onshore wind, if turbines are located at least two miles from a golden eagle nest and at least 660 feet from a bald eagle nest, any incidental take is automatically authorized up to specific thresholds. Operators must conduct monitoring to examine eagle take and provide adaptive management measures if the project exceeds take thresholds. For power lines, applicants must develop either a reactive retrofit strategy, a proactive retrofit strategy, a collision response strategy, or a shooting response strategy.<sup>81</sup>

#### **5. Expanded NEPA Categorical Exclusions for Transmission**

The DOE issued a proposed rulemaking on November 16, 2023, to add categorical exclusions for certain energy storage systems and to revise categorical exclusions for upgrading and rebuilding transmissions lines.<sup>82</sup> DOE establishes and revises categorical exclusions that are supported by a record showing that actions normally do not have significant impacts, individually or cumulatively. The proposed revisions would expand transmission categorical

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<sup>80</sup> The President’s Council on Environmental Quality adopted regulations implementing these statutory changes on May 1, 2024. CEQ, *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, 89 Fed. Reg. 35442 (May 1, 2024).

<sup>81</sup> Final rule available at <https://www.govinfo.gov/content/pkg/FR-2024-02-12/pdf/2024-02182.pdf>.

<sup>82</sup> Proposed rule available at <https://www.federalregister.gov/documents/2023/11/16/2023-25174/national-environmental-policy-act-implementing-procedures>.

exclusions to a class of actions normally requiring an EA, and to a class of actions normally requiring an environmental impact statement. If implemented, the categorical exclusion for upgrading and rebuilding existing powerlines would truncate the permitting timeline and greatly expedite the permitting process. Recent studies indicate that new technologies could, using this process, significantly expand the capacity of the existing transmission system without requiring major construction.<sup>83</sup>

## **6. EPA Permitting Dashboard**

On April 2, 2024, EPA announced that it will launch a new centralized website, [epa.gov/permits](https://epa.gov/permits), that will display the status of EPA permits for large scale infrastructure projects, as well as providing centralized information about EPA permitting programs, environmental justice permitting information, and information about funding provided to EPA under the Inflation Reduction Act to improve its permitting efficiency.<sup>84</sup>

## **7. Conservation Leasing**

On May 9, 2024, the Bureau of Land Management (“BLM”) published the Public Lands Rule, which aims to protect and restore public lands using science and data-based decision-making processes. The rule was enacted partly pursuant to the BLM’s statutory mandates to manage public lands “under principles of multiple use and sustained yield” under 43 U.S.C. 1732(a) and to “take any action necessary to prevent unnecessary or undue degradation” of public lands under 43 U.S.C 1732(b).

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<sup>83</sup> E.g., U.S. Department of Energy, [Pathways to Commercial Liftoff: Innovative Grid Deployment](#) (April 2024); M. O’Boyle *et al.*, [Supporting Advanced Conductor Deployment: Barriers and Policy Solutions](#), GridLab & Goldman School of Public Policy, University of California at Berkeley (April 9, 2024).

<sup>84</sup> News Release, [EPA Launches New Website to Improve Transparency in Permitting](https://www.epa.gov/newsreleases/epa-launches-new-website-improve-transparency-permitting) (April 2, 2024) (available at <https://www.epa.gov/newsreleases/epa-launches-new-website-improve-transparency-permitting>).

To carry out its statutory mandate, and most relevant for renewable energy project development, the rule establishes two types of conservation leases: restoration leases and mitigation leases. Qualified individuals, businesses, non-governmental organizations, Tribal governments, conservation districts, and State fish and wildlife agencies may use restoration and mitigation leases to restore public lands or to mitigate impacts from authorized activities on public lands. These leases will be issued and overseen directly by the BLM and will not interfere with existing rights, or state or Tribal land use management. Restoration and mitigation leases also will not preclude subsequent uses of lands so long as those uses are compatible with the leased restoration or mitigation activities.

Renewable energy developers will most likely apply for mitigation leases in instances where projects proposed on public lands present unavoidable impacts to wilderness or recreation resources. In such cases, the BLM may determine that compensatory mitigation is appropriate and lease an area in a different location to the developer in order to protect or restore resources for the duration of a project's impacts.

Conservation leases under the Public Lands Rule complement the BLM's Renewable Energy Rule, published on May 1, 2024. According to the BLM, that final rule "reduces acreage rents and capacity fees, improves the BLM's application process, and delivers greater predictability for how the BLM will administer future solar and wind project authorizations."

## **8. Federal-State Modern Grid Deployment Initiative**

In May 2024, the Biden-Harris Administration launched the Federal-State Modern Grid Deployment Initiative (the "Initiative").<sup>85</sup> The Initiative recognizes that deployment of new

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<sup>85</sup> *Federal-State Modern Grid Deployment Initiative*, WHITE HOUSE (May 2024), [https://www.whitehouse.gov/wp-content/uploads/2024/05/Federal-State-Modern-Grid-Deployment-Initiative-Principles\\_formatted.pdf](https://www.whitehouse.gov/wp-content/uploads/2024/05/Federal-State-Modern-Grid-Deployment-Initiative-Principles_formatted.pdf); *Fact Sheet: Biden-Harris Administration Launches Federal-State Initiative to Bolster America's Power Grid*, WHITE HOUSE



transmission assets—necessary to meet growing energy demands and accommodate the deployment of new generation—requires a significant amount of time and resources. It therefore promotes state and federal cooperation to achieve additional capacity on the existing grid via installation of high-performance conductors and Grid Enhancing Technologies (“GETs”). GETs include dynamic line ratings, a blanket term encompassing technologies and methodologies that assess real-time data to determine, and optimize, line capacity.

21 states have signed on to the Initiative: Arizona, California, Colorado, Connecticut, Delaware, Hawai’i, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin. In exchange for policy, technical, and analytical assistance from the federal government, these states have committed to prioritizing the adoption of modern grid solutions to increase capacity on existing infrastructure.

To achieve the goals of the Initiative, \$10.5 billion in competitive grant funding has been made available through the Grid Resilience and Innovation Partnership (“GRIP”) program.<sup>86</sup> The Initiative complements other recent transmission-modernization efforts, including FERC’s Order 1920, which mandates long-term regional transmission planning and requires transmission providers to consider the use of advanced conductors and GETs in their planning processes.<sup>87</sup>

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BRIEFING ROOM (May 28, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/28/fact-sheet-biden-harris-administration-launches-federal-state-initiative-to-bolster-americas-power-grid/>.

<sup>86</sup> *Fact Sheet: Biden-Harris Administration Announces Key Actions to Strengthen America’s Electric Grid, Boost Clean Energy Deployment and Manufacturing Jobs, and Cut Dangerous Pollution from the Power Sector*, WHITE HOUSE BRIEFING ROOM (April 25, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/25/fact-sheet-biden-harris-administration-announces-key-actions-to-strengthen-americas-electric-grid-boost-clean-energy-deployment-and-manufacturing-jobs-and-cut-dangerous-pollution-from-the/>; *Grid Resilience and Innovation Partnerships (GRIP) Program*, DEPARTMENT OF ENERGY GRID DEPLOYMENT OFFICE, <https://www.energy.gov/gdo/grid-resilience-and-innovation-partnerships-grip-program>. (last visited May 31, 2024).

<sup>87</sup> *Fact Sheet: Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, FEDERAL ENERGY REGULATORY COMMISSION (May 13, 2024), <https://www.ferc.gov/news-events/news/fact-sheet-building-future-through-electric-regional-transmission-planning-and>.

## B. State Permitting Reforms

Several states with aggressive decarbonization timelines like those adopted in Washington have recently enacted permitting reforms aimed at speeding the development of renewable energy and other infrastructure projects necessary to achieve these states’ decarbonization goals. We here briefly describe the legislation, as well as proposed legislation that is worthy of notice.

Several states have adopted processes similar to Washington’s EFSEC process. The following chart summarizes the laws governing those states’ processes:

STATE	Agency	Standard for Action	Preemption of Local Ordinances?	Other Permits Required?	Time Limit for Action?
California	State Energy Resources Conservation and Development Commission <sup>88</sup>	Yes (PRC 25545.8, 25545.9)	Yes (PRC 25545.1(b))	Possibly (PRC 25545.1(b)(2))	Certification process must be complete within 270 days of complete application (PRC 25545.4(e))
Connecticut	Connecticut Siting Council <sup>89</sup>	Yes (R.C.S.A. § 16-50j-59)	No (Conn. Gen. Stat. § 16-50t(b))	Yes	One year after complete application for transmission lines, 180 days for all other facilities (Conn. Gen. Stat. § 16-50p)

<sup>88</sup> Cal. Public Resources Code (“PRC”) § 25545, available at [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=15.&title=&part=&chapter=6.2.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=15.&title=&part=&chapter=6.2.&article=).

<sup>89</sup> Connecticut General Statutes (“Conn. Gen. Stat”) chapter 277a, available at [https://www.cga.ct.gov/current/pub/chap\\_277a.htm#sec\\_16-50j](https://www.cga.ct.gov/current/pub/chap_277a.htm#sec_16-50j); Regulations of Connecticut State Agencies (“R.C.S.A.”) title 16, available at <https://eregulations.ct.gov/eRegsPortal/Browse/getDocument?guid={409EE155-0200-C014-8F51-8588DD14E405}>.

Massachusetts	Energy Facilities Siting Board <sup>90</sup>	Yes (980 CMR 6.03; 164 MGL 69O)	Yes (164 MGL 69K)	No (164 MGL 69K)	Six months from date of complete application (980 CMR 6.05(1))
Michigan	Michigan Public Service Commission <sup>91</sup>	Yes (MCL 460.1226(7))	Yes (MCL 460.1231)	Potentially (MCL 460.1231(5))	One year after a complete application is filed (MCL 460.1226(5))
Minnesota	Minnesota Public Utilities Commission <sup>92</sup>	Yes (Minn. Stat. § 216E.03(7))	Yes (Minn. Stat. § 216E.10(1))	Yes (Minn. Stat. § 216E.10(2))	Final decision on application within 60 days of ALJ report (Minn. Stat. § 216E.03(9))
New Hampshire	Site Evaluation Committee <sup>93</sup>	Yes (RSA § 162-H:16; N.H.A.R. Site 301.03)	No	Yes, application must contain evidence of other applicable permits (RSA § 162-H:7-a, 162-H:16; N.H.A.R. Site 301.03(c)(6)b)	Within one year after receipt of complete application (N.H.A.R. Site 301.12)
New York	Office of Renewable Energy Siting <sup>94</sup>	Several (N.Y. Exec. Law § 94-c[3](b); 19	Yes (N.Y. Exec. Law § 94-c[6])	No (N.Y. Exec. Law § 94-c[4], [6])	Six months to one year, depending on project (19

<sup>90</sup> Massachusetts General Laws (“MGL”) chapter 164 § 69H, available at <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter164>; Code of Massachusetts Regulations (“CMR”) title 980, available at <https://www.mass.gov/law-library/980-cmr>.

<sup>91</sup> Michigan Compiled Laws (“MCL”) Chapter 460.1221–32, available at <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-460-1226-ADDED>.

<sup>92</sup> Minnesota Statutes (“Minn. Stat.”) § 216E, available at <https://www.revisor.mn.gov/statutes/cite/216E>; Minnesota Administrative Rules (“Minn. R.”) chapter 7854, available at <https://www.revisor.mn.gov/rules/7854/>. On March 7, 2024, Minnesota introduced HF 4700, which requires the state to transition to a carbon-free electric grid by 2040. If adopted, the statute would replace Minnesota’s existing permitting system with expedited processes under “major”, “minor”, and “local” review standards. The statute also provides for expedited review of permits for minor alterations and exempts certain smaller projects. The current version of the bill is available at <https://www.revisor.mn.gov/bills/bill.php?f=HF4700&y=2024&ssn=0&b=house>.

<sup>93</sup> New Hampshire Revised Statutes Annotated (“RSA”) § 162-H, available at <https://www.gencourt.state.nh.us/rsa/html/XII/162-H/162-H-mrg.htm>; New Hampshire Administrative Rules (“N.H.A.R.”) Site 100, available at [https://www.gencourt.state.nh.us/rules/state\\_agencies/site100-300.html](https://www.gencourt.state.nh.us/rules/state_agencies/site100-300.html).

<sup>94</sup> New York Executive Law (“N.Y. Exec. Law”) § 94-c, available at <https://www.nysenate.gov/legislation/laws/EXC/94-C>; 19 New York Codes, Rules and Regulations (“N.Y.C.R.R.”) Part 900, available at <https://ores.ny.gov/system/files/documents/2020/09/draft-regulations-chapter-xviii-title-19-subparts-900-1-900-5-900-7-900-14.pdf>.

		N.Y.C.R.R. § 900-2)			N.Y.C.R.R. § 900-9.1)
Ohio	Ohio Power Siting Board <sup>95</sup>	Yes (ORC 4906.10)	Yes (ORC 4906.13)	No (ORC 4906.13(B))	Ninety days after receipt of complete application (ORC 4906.03(E))
Oregon	Energy Facility Siting Council <sup>96</sup>	Several (ORS 469.501; ORS 469.503; OAR 345-022-0000 through 0120; OAR 345-025-0500, 0580; OAR 345-023-0000)	Effectively (ORS 469.401; “applicable substantive criteria” include ordinances in effect on date of application. OAR 345-022-0030)	No (ORS 469.401(1))	Varies by project (ORS 469.370(9))
Rhode Island	Energy Facility Siting Board <sup>97</sup>	Yes, and decision sent to legislature to be affirmed (R.I.G.L. § 42-98-11(c))	Effectively (advisory opinions sent by other state agencies or zoning boards do not need to be followed, R.I. Gen. Laws § 42-98-11(c))	No, agencies provide advisory opinions (R.I. Gen. Laws § 42-98-7(a)(2))	Final decision within sixty days of conclusion of final hearing (R.I. Gen. Laws § 42-98-11(c))
Vermont	Vermont Public Utilities Commission <sup>98</sup>	Yes (30 V.S.A. § 248(b))	Yes ( <i>City of South Burlington v. Vermont Elec. Power Co., Inc.</i> , 133 Vt. 438, 344 A.2d 19 (1975); 24 VSA § 4413 (b))	No (24 V.S.A. § 4413(b))	No stated timeline
Washington	Energy Facility Siting	None – Recommendation	Yes	No	One year from receipt of

<sup>95</sup> Ohio Revised Code (“ORC”) Chapter 4906, available at <https://codes.ohio.gov/ohio-revised-code/chapter-4906>.

<sup>96</sup> Oregon Revised Statutes (“ORS”) Chapter 469, available at [https://www.oregonlegislature.gov/bills\\_laws/ors/ors469.html](https://www.oregonlegislature.gov/bills_laws/ors/ors469.html); Oregon Administrative Rules (“OAR”) Chapter 345, available at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=79>.

<sup>97</sup> Rhode Island General Laws (“R.I.G.L.”) § 42, available at <http://webserver.rilin.state.ri.us/Statutes/TITLE42/42-98/INDEX.HTM>; Rhode Island Code of Regulations (“R.I.C.R.”) title 445, available at [https://ripuc.ri.gov/sites/g/files/xkgbur841/files/efsb/EFSB2/SB2018\\_05\\_Rule\\_Practice.pdf](https://ripuc.ri.gov/sites/g/files/xkgbur841/files/efsb/EFSB2/SB2018_05_Rule_Practice.pdf).

<sup>98</sup> Title 30 Vermont Statutes Annotated (“V.S.A.”) § 248, available at <https://legislature.vermont.gov/statutes/section/30/005/00248>.

Evaluation Council <sup>99</sup>	on to Governor (RCW 80.50.100)	(RCW 80.50.110)	(RCW 80.50.120)	complete application (80.50.100(1)(a))
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We now describe permitting reforms adopted in several states we view as particularly useful models, involving both EFSEC-style processes and other processes.

## 1. California

Recognizing the need to expedite permitting of renewable energy facilities and supporting infrastructure, California in 2022 adopted AB 205, which includes provisions that centralize permitting of critical facilities and subject the permitting process to specific deadlines.

California’s expedited permitting process has the following features:

- *Eligible facilities:* The new permitting process is available to:
  - Solar and wind generation with a capacity of 50 MW or more and appurtenant facilities, as well as facilities with a capacity of 50 MW or more using any source of thermal generation other than fossil fuels or nuclear power.
  - Energy storage systems with a capacity of 200 MWh or more.
  - “Discretionary projects,” which are those requiring a capital investment of at least \$250 million and that will manufacture or produce components or specialized products used in renewable generators or energy storage projects.
  - Electrical transmission lines carrying power from a covered renewable generator or storage project to a point of interconnection with the existing electric transmission system.
- *Centralized Authority:* Developers of eligible projects may submit an application to the State Energy Resources Conservation and Development Commission, more commonly referred to as the California Energy Commission (“CEC”), to have their application treated in accordance with AB 205. Certain small renewable projects may also seek CEC certification. The CEC is empowered to permit construction of such facilities, and the permit is “in lieu of any permit, certificate or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by federal law,”<sup>100</sup>

<sup>99</sup> Chapter 80.50 Revised Code of Washington (“RCW”), available at <https://app.leg.wa.gov/RCW/default.aspx?cite=80.50&full=true>.

<sup>100</sup> Cal. Public Resources Code § 25545.1(b)(1).

although the authority of regional water quality and air quality boards remain, as does the permitting authority of certain agencies regulating coastal development. Projects subject to the CEC process must also pay lease fees to the State Lands Commission if their projects occupy state lands.

- *Specific timelines:* AB 205 imposes a number of specific deadlines on the CEC. The CEC must, within 30 days of receiving an application, determine whether the application is complete and, if not, notify the project developer of any deficiency. The project developer must respond within thirty days and the application is considered complete immediately upon receipt of the requested information. The certification process must be completed within 270 days after the application is deemed complete, although the deadline may be extended under limited circumstances. For example, the timeline can be extended if the project developer proposes substantial changes to the project, new information comes to light that could not have been known when the project application was accepted, or additional time is necessary to conduct required surveys.

Within the 270-day period, the CEC is required to conduct a public outreach process. It must conduct an initial public information meeting between ten and thirty days after the application is deemed complete, and a public workshop in the community nearest the project must be conducted within 60 days. A meeting to scope the project's environmental impact analysis must be conducted within 30 days of when the project application is complete, and a hearing must be held 30 to 60 days after notice that the draft environmental report is complete. Some of these meetings can be combined. The CEC must certify the environmental report within 30 days after it is finalized.

Native American Tribes that are “culturally and traditionally associated with” the project's geographic location must be notified and a tribal consultation process must follow. In addition, the CEC “shall take feasible measures to avoid or minimize adverse impacts to tribal cultural resources.”<sup>101</sup>

- *Protections for Local Interests:* AB 205 declares eligible projects to be projects of statewide significance and the state interest is sufficiently strong to justify preemption of local regulation. Nonetheless, several protections for local interests are built into the law. First, as noted above, the CEC is required to notify local governments in the project area, and they may participate in the CEC process. Second, the CEC may not approve a project unless it determines that the project will produce “an overall net positive economic benefit to the local government.”<sup>102</sup> In addition, the project developer is required to enter into a community benefits agreement that will provide benefits to the local community, that must include job training and other economic benefits, and may also address benefits to local amenities such as parks.

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<sup>101</sup> Cal. Public Resources Code § 25545.9

<sup>102</sup> *Id.*

- *Labor Protections:* The project developer must also enter into an agreement with a relevant organization to assure that prevailing wages are paid, that an apprenticeship program is in place, and that other labor protections are observed.
- *Appeals:* AB 205 requires the California Judicial Council to adopt court rules requiring appeals of CEC decisions under that law to be completed within 270 days of the filing of the CEC’s certified administrative record with the reviewing court.

## 2. New York

In 2020, the State of New York enacted the Accelerated Renewable Energy Growth and Community Benefit Act,<sup>103</sup> which created an Office of Renewable Energy Siting (“ORES”) to provide a consolidated permitting process for renewable energy projects in the state. ORES is charged with developing uniform standards and conditions for each category of renewable energy project within its purview that are designed to “avoid or minimize, to the maximum extent practicable, any potential significant adverse environmental impacts related to the siting, design, construction and operation of” large renewable generators.<sup>104</sup> These uniform standards and conditions are intended to identify the environmental impacts of each major source of renewable energy (e.g., solar, wind, geothermal, energy storage) and to provide generic standards for the developers of each type of project to meet.

In addition, once an application is received from project developer, ORES is required to review the site-specific environmental impacts of the project and, to the extent possible, condition the project to avoid those impacts or, if the impacts cannot be avoided, to mitigate them through established programs for off-site mitigation. This includes a requirement to achieve “a net conservation benefit to any impacted endangered or threatened species,” which can be achieved by off-site mitigation.<sup>105</sup>

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<sup>103</sup> The Act was included as Part JJJ of [SB 9508-B](#).

<sup>104</sup> N.Y. Exec. Law § 94-c(3)(c), replaced by Section 138 of the RAPID Act.

<sup>105</sup> N.Y. State Fin. Law § 99-hh(3), replaced by Section 138 of the RAPID Act.

On April 20, 2024, New York further clarified ORES's responsibilities through adoption of the RAPID Act.<sup>106</sup> The RAPID Act moves ORES to the New York Department of Public Service and replaces much of the language discussed above with new statutory text clarifying ORES's various responsibilities.

Other key elements of New York's program include:

- *Eligible Projects:* Renewable energy projects, including appurtenant facilities and transmission tie lines up to ten miles in length, are required to go through the ORES process if they have a capacity of 25 MW or more. Projects of between 20 and 25 MW may voluntarily seek to use the ORES process. Projects that are subject to a federal licensing scheme (primarily hydroelectric power projects) are exempt, and the New York State Department of Environmental Conservation retains its authority to issue permits where it has been authorized to do so under a federal environmental law such as the Clean Air Act or Clean Water Act.
- *Deadlines:* ORES has 60 days to determine if an application is complete and, if it is not, it must notify the project developer in writing within 60 days of any deficiency. If it fails to meet this deadline, the application is deemed completed. Within 60 days after the application is complete, ORES must initiate a public hearing process that includes notification of relevant local agencies and newspapers and publication of the notice on ORES's website. ORES has one year from the date the application is deemed complete to issue or deny a permit for construction, with the deadline reduce to six months if the project is proposed for a brownfield, landfill, abandoned energy generation site, or former commercial or industrial site. A parallel provision of the statute requires the New York Public Service Commission to complete its review of major utility-developed transmission projects within one year of receiving a complete application, subject to limited exceptions allowing an extension of the one-year period. The period is reduced to nine months for transmission constructed within existing rights of way, including transportation and canal rights of way as well as transmission and distribution rights of way, subject to expansion of the right of way if necessary to meet regulatory requirements.
- *Local Regulation:* As part of the ORES process, ORES examines whether the project complies with relevant local laws and regulations. After receiving notification, a local agency may submit a statement addressing whether the proposed project complies with local laws and regulations. ORES may hold a hearing to decide that question. If the project meets local requirements, ORES may approve the project. If it does not, ORES may exempt the project from local requirements if it concludes that the local requirements are unreasonably burdensome and are inconsistent with New York's

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<sup>106</sup> The RAPID Act was enacted as part of budget legislation. The statute is contained in [Article VII, Part O](#), of the budget enactment.



decarbonization goals, which are similar to Washington's. ORES must require the project developer to enter into a community benefit agreement with the host community.

- *Fee:* Applicants are required to pay fees to support processing of their applications, with the size of the fee based on the size and type of project. Fees are deposited in an account dedicated to fund local agencies who wish to intervene in the ORES process.
- *Development Incentives:* The New York law authorizes the New York State Energy Research & Development Authority (“NYSERDA”) to develop a program aimed at providing incentives for development of renewable energy facilities on previously-used land and on sites that are difficult to develop consistent with applicable law. Under this program, NYSERDA can undertake the process of permitting projects on such sites, then sell the site, along with permits and other necessary land and transmission rights, in “shovel ready” condition to private developers. NYSERDA can also provide incentives to local communities and property owners to encourage them to accept renewable energy developments.
- *Environmental Mitigation:* The legislation establishes a mitigation bank fund for threatened and endangered species, funded by ORES applicants with a relevant mitigation requirement included in their permit to construct. The fund is intended to provide a readily-accessible mitigation alternative for project developers whose projects may affect threatened or endangered species and those impacts cannot be avoided through conditions on the project.
- *Agricultural Lands:* The RAPID Act adds a requirement for several state agencies, along with local governments, agricultural groups, and interested parties to, within one year, develop recommendations for the protection and minimization of impacts to agricultural lands in the ORES process.

### **3. Illinois**

In early 2023, Illinois enacted legislation aimed at limiting overly restrictive local zoning ordinances on development of renewable energy in the state. The Illinois legislation, [HB 4412](#), takes a much different approach than the bills in New York or California. Rather than centralizing the permitting process in a single state authority, the Illinois bill places limitations on how local agencies can regulate wind or solar energy development.

HB 4412 amends Illinois's Counties Code, which is the statute providing regulatory authority to county governments, to define the maximum limits of their authority to regulate commercial-scale wind and solar projects. For solar projects, counties are permitted to establish a

setback of 150 feet from occupied dwellings and 50 feet from public rights of way, but may not establish more restrictive setbacks. Counties may require the solar farm to be surrounded by a fence of between six and 25 feet and may require vegetative screening of the solar site, but may not require earthen berms.

For wind energy, the permitted setbacks are based on the wind generators' maximum blade height. Setbacks from occupied buildings and wildlife areas are limited to 2.1 times blade height, and setbacks from homes of residents that have contracted with the project developer for an easement or other land right are 1.1 times blade height. Counties may limit shadow flicker in occupied buildings to 30 hours per year. Blade height restrictions may not be more restrictive than those established by the FAA.

Counties are barred from prohibiting renewable energy through moratoria, and may not prohibit development on agricultural lands, although they may require solar developers to follow guidelines for pollinator preservation and other standard agrovoltaic practices. Counties may charge fees and impose construction conditions on renewable energy developers only if the fees and conditions are consistent with fees and conditions that are imposed on other types of development in the county.

Counties must hold a hearing on a renewable energy project within 45 days after receiving a complete application and must make a determination on the application within 30 days after the hearing. The County may require wildlife mitigation if consistent with recommendations made by state and federal wildlife officials based on standard mapping protocols.<sup>107</sup>

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<sup>107</sup> On May 21, 2024, Colorado Gov Polis signed [SB 24-212](#), which provides technical assistance to Colorado Tribes and counties by providing model codes and similar resources to govern renewable energy and transmission development. In 2023, Colorado passed legislation easing permitting barriers to rooftop and behind-the-meter solar generation. *See* Colorado [HB23-1234](#) (signed May 11, 2023).

#### 4. Michigan

In November 2023, to be effective on November 29, 2024, Michigan enacted HB 5120.

The new statute creates a process by which the Michigan Public Service Commission (“MPSC”) may preempt local laws and regulations that unduly restrict renewable energy development.

- *Eligible Facilities.* The Michigan statute applies to solar facilities with a nameplate capacity of 50 MW or more, wind facilities with a nameplate capacity of 100 MW or more, and energy storage facilities with a nameplate capacity of 50 MW or more and an energy discharge capacity of 200 MWh or more. In each case, the facility is defined to include all appurtenant facilities, including generation tie lines, access roads, wires, foundations, and the like.
- *Local Government Consultation:* A project developer may voluntarily seek local government approval using the following process: the project developer, with at least 30 days advance notice which must include the facility site plan, holds a public meeting in the relevant locality. At least 60 days before the public meeting, the project developer must offer to meet with the chief elected official of the relevant local authority. If the elected official notifies the project developer that it has a compatible ordinance, the project developer may file for approval with that ordinance. The local government agency must approve or deny the application within 120 days after receipt, which may be extended up to an additional 120 days if both the project developer and the local government agree.

The applicant may file an application with the MPSC if: (a) the local government fails to act within the 120-day deadline; (b) if the proposal meets defined setbacks and other requirements specified in the statute (which are very similar to the standards specified in Illinois) but the local government denies the application anyway, which makes the statutory standards the most restrictive that can be adopted by the local agency; or, (c) the local government amends the applicable ordinance after the local government has notified the project developer that a compatible local ordinance is available.

- *MPSC Application:* As an alternative to the local consultation process (although MPSC may order the project developer to go through the local consultation process), the project developer may submit an application to the MPSC. The application must include information covering a broad range of issues, including efforts the project developer has undertaken to consult with local agencies and environmental regulators, evidence of the project’s impact on telecommunications signals, stormwater management plans, emergency response plans, and decommissioning plans, including minimum financial assurances.
- *Deadlines.* The MSPC has 60 days to determine if the application is complete and, if it fails to notify the applicant in writing of any deficiencies within the 60-day window, the

application is considered complete by default. The MPSC must make a final decision within one year of receiving the final application.

- *Deposits.* The project developer must make a one-time grant of up to \$75,000 per affected local government, not to exceed \$150,000 in total, to allow affected local governments to participate in the required administrative hearing before the MPSC.
- *Granting the Application:* The MPSC “shall grant the application and issue a certificate” if it determines that seven specific criteria are met. These are:
  - That the public benefits of the project, to include tax benefits, community benefits, job creation, and energy benefits, justify construction.
  - That the project complies with Michigan’s Natural Resources and Environmental Protection Act.
  - That the applicant has considered and addressed impacts to environmental concerns, including sensitive habitats and waterways, wetlands, floodplains, parks, historic sites, and threatened and endangered species.
  - The applicant has entered into required community benefits agreements and labor agreements.
  - The applicant will meet U.S. Department of Labor apprenticeship requirements, will pay prevailing wages, and, to the extent permitted by law, will enter into a project labor agreement or collective bargaining agreement.
  - The project will not “unreasonably diminish” farmland, including prime farmland.
  - The project does not present an unreasonable threat to health and safety. This requirement is met if the project meets the setback and other requirements set forth in the statute.
- If the MPSC issues a certificate, local zoning ordinances are preempted.

## **5. Minnesota**

Minnesota passed, and Governor Waltz signed, a sweeping package of climate laws in 2023, including requiring the state to generate 100 percent of its electricity from carbon-free sources by 2040. In May of 2024, Governor Waltz signed the Minnesota Energy Infrastructure

Permitting Act.<sup>108</sup> The act reduces procedural requirements, consolidates environmental review authority for energy projects to the Minnesota Public Utilities Commission, limits certain contested case hearings, and exempts all wind and solar projects and some transmission lines from the requirement to obtain a certificate of public convenience and necessity, which is otherwise required for electricity infrastructure.

*Site and Route Permit Process:* The act divides site and route permitting into “major” and “standard” review processes. At least 30 days prior to submitting an application, an applicant must notify affected local governments, affected Tribal governments, and state technical resource agencies and seek preapplication feedback. The commission must determine whether an application is complete within ten working days of its receipt and hold public hearings and receive comments thereafter. Under Major Review, the commission must make a final decision on an application within one year of the date it determines an application is complete, and within six months of a complete application determination under standard review. Standard review is available for projects less than 80 MW, natural gas facilities, certain high voltage transmission lines, solar facilities, wind facilities, and energy storage facilities.

*Certificates of Need:* Minnesota requires a certificate of need issued by the public utility commission prior to the construction of large energy facilities. The act modifies the definition of “large energy facility” with respect to transmission lines. A certificate of need is required for lines with a capacity of 300 kV or more and greater than one mile in length in Minnesota, or with a capacity of 100 kV or more and greater than ten miles of length or that crosses a state line. The act also retains certificate of need exemptions for wind and solar facilities and adds exemptions

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<sup>108</sup> Available at [https://www.revisor.mn.gov/bills/text.php?number=SF4942&type=bill&version=4&session=ls93&session\\_year=2024&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=SF4942&type=bill&version=4&session=ls93&session_year=2024&session_number=0).

for energy storage systems and transmission lines that directly interconnect wind or solar facilities.

## 6. State Energy Authorities

Three Western states have recently created energy authorities that are aimed at promoting new and renewable technologies such as carbon capture and advanced nuclear generation, improving transmission planning, identifying transmission corridors, and providing information to project developers aimed at reducing conflicts that might otherwise slow or halt project permitting. New Mexico established its Renewable Energy Transmission Authority in 2007,<sup>109</sup> Wyoming created the Wyoming Energy Authority in 2020,<sup>110</sup> and Colorado created the Colorado Electric Transmission Authority in 2021.<sup>111</sup> While each of these authorities have unique characteristics, they were all formed to promote the development of electric transmission and to encourage the development of renewable energy resources.

These state authorities each:

- Engage in transmission planning activities aimed at promoting renewable energy and economic development and increasing grid reliability.
- Identify and establish electric transmission corridors within the relevant state, working with other states and the federal government to coordinate development of transmission corridors.
- Promote non-wires alternatives and new transmission technology to maximize the efficient use of the existing transmission system, including in at least one case the use of energy storage to reduce transmission loads.
- May issue government bonds to support transmission and other projects and may collect fees and other charges from operating or leasing facilities in order to finance future projects.

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<sup>109</sup> NM Stat. Chapter 62, Art. 16A; <https://nmreta.com/>.

<sup>110</sup> See Wyo. Stat. Ann. § 37-5-502 *et seq.*; <https://wyoenergy.org/>.

<sup>111</sup> Colo. Stat. Ann. Title 40, Art. 42.; <https://www.cotransmissionauthority.com/>.

- May exercise the power of eminent domain to acquire property for rights of way necessary for the construction of linear facilities like transmission lines.
- May enter into partnerships with public or private entities to develop projects. The Colorado Transmission Authority is considered a “provider of last resort,” which steps in to build priority transmission projects when no other developer is willing to step in.
- Provide information to developers, landowners, and other interested parties. The Wyoming Energy Authority, for example, provides guides to the permitting process for wind and solar developers. The Wyoming authority also provides studies and other support for alternative technologies like geothermal power and for new technologies like hydrogen.

## 7. Track Record to Date

Because these laws are recent, none have an extensive track record. However, a recent study concluded that the New York process has worked well, with the eight renewable energy projects reviewed through ORES taking less than eight months on average to receive a permit, with only one taking a full year.<sup>112</sup> On the other hand, a recent report from New York’s Comptroller, which reviewed 15 projects reviewed by ORES found that, while the time to review completed applications took one year or less, the time from initial application until an application is deemed complete was generally much longer, an average of three years. The Comptroller recommended that the time from initial application to issuance of a permit, as well as the time from final application to permit, be tracked.<sup>113</sup> We have been unable to locate any quantitative analyses of the other state laws we discuss above, but anecdotal evidence gathered through our interviews suggests that the processes in Illinois and California have improved permitting timelines significantly.

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<sup>112</sup> J. Arnold & M. Beck, Canadian Climate Institute, [Permitting reform for clean energy projects in New York and California Promising changes at the state level may hold useful lessons for Canada](#) (Nov. 14, 2023)

<sup>113</sup> Office of the New York State Comptroller, [Office of Renewable Energy Siting: Application Review and Site Permitting for Major Energy Projects](#), Report No. 2023-S-52 (April 2024).

## 8. A Negative Example: Ohio

Major energy facilities in Ohio obtain permits through the Ohio Power Siting Board (“OPSB”), a body similar to EFSEC. Like EFSEC, an OPSB permit preempts any local laws or ordinances that would interfere with construction of an energy facility that is supported by a demonstration of statewide need. Before 2021, OPSB’s authority extended to permitting utility-scale wind and solar generators. In 2021, Ohio enacted [SB 52](#), which requires the proponent of a wind or solar facility to submit an application to the county or counties where the facility will be located and provides the counties an opportunity to respond by declaring all or parts of their counties off-limits to renewable energy development. Notably, SB 52 does not apply to other types of energy facilities, such as fossil-fired generators and petroleum pipelines.

The result has been a near-total elimination of utility-scale renewable generation in Ohio. Many counties have declared all or large parts of their counties off limits to renewables development, which has slowed renewable energy development to a crawl. In 2022, only five applications for utility-scale renewable projects were filed in Ohio and, in 2023 that number dropped to four.<sup>114</sup> Notably, a number of these projects filed applications with the OPSB before SB 52 was enacted, so were not subject to the same local restrictions that applied to applications for projects submitted after SB 52’s effective date.

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<sup>114</sup> B&D has represented the Allen-Auglaize Coalition for Reasonable Energy, a local citizens group supporting renewable energy development in Ohio, on a pro bono basis. We assisted the Coalition in proceedings before the OPSB and now the Ohio Supreme Court concerning the Birch Solar project, a utility-scale solar generator. Although the OPSB concluded that Birch Solar met every substantive statutory requirement for, for example, protection of the environment and historical resources, the OPSB nonetheless rejected Birch Solar’s application solely on the basis of local opposition. The OPSB’s decision has been challenged in the Ohio Supreme Court, and the Allen-Auglaize Coalition, along with a diverse group of amicus curiae including the Ohio Chamber of Commerce, the Ohio Manufacturer’s Association, and the Ohio Environmental Council, have filed briefs supporting reversal of the OPSB’s decision.



### **C. European Union Renewable Energy Directive**

The European Union’s Renewable Energy Directive (“Directive”), entered on November 20, 2023, is a legal framework developed with the overall goal of obtaining 42.5% of energy in the European Union from renewable sources by 2030.

While the Directive includes a variety of requirements and tools to achieve this goal, most relevant to permitting is developing a framework for expediting permitting of renewable energy projects. The Directive highlights a need to streamline administrative procedures and develop staffing and expertise so as to facilitate relationships between governments and developers.

The directive targets “Renewables Acceleration Areas” (“RAAs”), areas particularly suited for renewable energy development, which are eligible for streamlined permitting. The Directive requires Member States to develop plans for the development of specific types of renewable energy projects, with the aim of minimizing environmental impact. These areas, which should avoid protected regions and incorporate restoration and mitigation measures, are tailored to the requirements of the renewable technologies they host, with the combined size of these areas being sufficient to meet the needs of the chosen technologies.

The Directive also focuses on the procedures for projects that are not part of these renewable acceleration areas. It directs member states to adopt permitting procedures that do not exceed two years, except in cases of offshore renewable energy projects. It also directs member states to adopt a single procedure that combines all relevant assessments for any particular renewable energy project. The Directive also directs member states to adopt similar streamlining procedures for solar energy projects, associated storage, and heat pumps.

## PERMITTING REFORM RECOMMENDATIONS

Based on the recommendations contained in the Low-Carbon Siting Report, legislation from other jurisdictions discussed in Section IV, the many studies we have reviewed,<sup>115</sup> interviews we have conducted,<sup>116</sup> and the recommendations contained in previous reports issued by Washington agencies, we recommend the following reforms to Washington's permitting processes.

At the outset, however, we note that we do not recommend changes to the basic structure of Washington's permitting system: that is, the three options currently available to entities seeking to permit clean energy infrastructure and clean energy product manufacturing facilities in Washington should remain: EFSEC, Ecology's Coordinated Permitting Process, and the local county/city process. Project developers should remain free to choose the permitting path that best fits their project. Further, the legislation recently adopted in Washington, discussed in Section III, contains many desirable features and we propose retaining those but building on them.

Our specific recommendations are:

### A. Across-the-Board Reforms

Several reforms are recommended for all permitting processes.

- **Personnel:** We heard from project developers, permitting consultants, and permitting agencies alike that permitting agencies lack sufficient personnel to address the volume of project applications they are expected to process. In addition, project developers and permitting consultants consistently criticized permitting agencies for lack of expertise in project management and energy project development, resulting in uncoordinated and unnecessarily lengthy permitting processes. To address this concern, all permitting agencies should:
  - **Hire Sufficient Personnel.** Agency staffing should be optimized by hiring sufficient personnel to address the volume of project applications reasonably expected to be received by that agency. To the extent agencies experience spikes

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<sup>115</sup> A list of studies we have reviewed for this report is provided in Appendix F.

<sup>116</sup> A list of the entities whose employees or representatives we have interviewed for this report is provided in Appendix G.

in applications, they should be authorized to retain consultants to assist in processing those application spikes, with the option for applicants to pay for the necessary consultants.

- ***Hire/Train Project Managers.*** To coordinate permitting processes by ensuring that all involved agencies are working in tandem and according to schedule, employees with expertise in project management should be hired and salaries should be high enough to retain these individuals. In addition, the state should consider project management training programs that would allow current employees, who often have deep expertise in areas related to clean energy project permitting, to acquire project management expertise.
- ***Hire/Train Consultation Specialists.*** In light of emerging federal and state policies related to environmental justice and reducing environmental and economic burdens on overburdened communities, most notably the HEAL Act, the state should encourage hiring of individuals with experience and cultural understanding to engage Tribal, people of color and overburdened communities. In addition, the State should provide training to existing staff on best practices for engaging these communities.<sup>117</sup>
- ***Budget Line Item.*** Agencies with permitting responsibilities should submit budget line items for their permitting functions. This helps assure policy-makers that the agencies have adequate resources to carry out permitting responsibilities and also ensures that permitting budgets are not raided to pay for other agency priorities.
- ***Shared understanding of costs and resourcing adequately.*** Agencies with permitting responsibilities should have clear, up-to-date, and justifiable budgeting documentation for their permitting functions and should submit budget requests to meet demand as needed. Policy-makers and agencies should have a shared understanding of the costs and resource needs to enact permit policies; and the legislature should allocate adequate resources for agencies to carry out permitting responsibilities.
- ***SEPA Reforms.*** To ensure that the SEPA process is as efficient as possible while still attaining SEPA’s goals, all SEPA processes should:
  - ***Lead Agency.*** The lead agency for SEPA purposes should be identified within fourteen days of submission of the SEPA checklist.
  - ***Acceptance of SEPA Checklist.*** The lead agency should, within 30 days after receipt of the SEPA checklist, identify deficiencies and any additional information that is required and notify the project proponent of those deficiencies.

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<sup>117</sup> See, e.g., [Community Engagement Values and Guidance](#) Adopted by the Environmental Justice Council (August 25, 2023).

Within 7 days of receiving the additional information, the lead agency should determine whether the information is sufficient and inform the project proponent. Additional information submissions should follow the same 7-day process. To coordinate HEAL Act requirements with SEPA, environmental justice concerns should also be addressed in the checklist.

- ***Determination of Significance.*** Within 60 days of receiving a complete SEPA checklist, the lead agency should inform the project proponent of its determination whether the project threatens significant environmental impacts that require a full EIS. With the information in hand, the project proponent should be permitted to revise its proposal to avoid the identified impacts, either through project redesign or mitigation, so that the project can receive a determination of non-significance or mitigated determination of non-significance.<sup>118</sup>
- ***EIS Deadlines and Length Limitations.*** If a project requires an EIS, the EIS process, including any required environmental justice assessment, should be completed in all cases in no more than 24 months.<sup>119</sup> For projects employing a technology or system for which a nonproject environmental review has been performed, the EIS process should be limited to site-specific impacts that have not been addressed in the non-project review, and should be completed in no more than six months and limited to no more than 150 pages plus appendices. Similar time and page limits should apply to projects constructed on brownfields, existing rights of way, or other areas that are already significantly disturbed. These deadlines may be extended with the project proponent's agreement, which allows the proponent to, for example, account for delays in obtaining transmission interconnection rights and also to ensure that a record is developed that will pass muster in an appeal of a permit decision.
- ***Upfront Disclosure.*** Building on existing pre-application processes, project proponents and permitting agencies should be required to engage Tribes, localities, and overburdened communities through disclosure of proposals and potential impacts. Agencies, Tribes, and non-governmental organizations or individuals with concerns about a project, in turn, should be encouraged to identify those concerns as early as possible in the process. All such concerns should be identified in the pre-application process and scoping process. Concerns that are not identified in those stages should not be considered in later stages of analysis unless the party attempting to raise a new issue or facts demonstrates that

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<sup>118</sup> Currently, RCW 43.21.033 requires the threshold determination to be made within 90 days, subject to certain exceptions. For "clean energy projects," RCW 43.21C.530(2)(a), requires that, prior to making its determination of significance, the lead agency provide the applicant with a written statement anticipating its significance determination and allow the applicant to withdraw and revise its application. The lead agency has thirty days after the resubmission to revise its significance determination unless the applicant has substantially changed its project.

<sup>119</sup> HB 1216 added a deadline of twenty-four months from the determination of significance for completion of the EIS for clean energy projects, with an additional extension of up to 24 months if the applicant agrees and the revised schedule is publicly posted. RCW 43.21C.530(3)

the concerns could not reasonably have been discovered and identified in the pre-application or scoping process.

- ***Social Cost of Carbon.*** To ensure that the value of GHG reductions is accurately reflected in SEPA processes, all SEPA and environmental justice analyses (and other analyses involving GHGs such as utility integrated resource planning) should incorporate the Social Cost of Carbon if the analysis involves a project that could either significantly reduce or significantly increase GHG reductions. The Social Cost of Carbon is a science-based metric that identifies the per-ton cost of GHG emissions arising from climate impacts like sea level rise, increasingly violent weather, and droughts. To ensure uniformity, the Social Cost of Carbon as determined by the federal Interagency Working Group on the Social Cost of Carbon should be used in all SEPA analyses.
- ***Nonproject Environmental Reviews.*** In addition to those already mandated by HB 1216, responsible agencies should continue to conduct non-project environmental reviews for renewable energy technologies or clean technologies that are likely to be deployed at multiple sites across the state. Such technologies might include, for example, electric generation fueled by biomass or biogas and emerging carbon capture technologies, such as the geological storage technology developed by the Pacific Northwest National Laboratory that sequesters carbon deep in basalt formations, which are common across much of Washington.<sup>120</sup>

The timelines suggested above are already included in the Coordinated Permitting Process via HB 1216, except for the six-month time limit for brownfield sites, which is borrowed from New York’s legislation. Shorter timelines for completion of the environmental assessment process are included in legislation from several other states discussed above and the 24-month limit has been adopted here in Washington in HB 1216, in federal NEPA reform legislation, and in the European Union. In addition, the suggested page limits mirror the page limits adopted in recent federal legislation reforming NEPA.

- ***Standardized Mitigation.*** For projects with unavoidable impacts, standardized mitigation requirements should be developed for both environmental and environmental justice impacts. For example, mitigation for loss of wetlands through wetlands mitigation banks – that is, where the project causes the loss of some wetlands, the project proponent pays for specified acreage to be added to a wetlands restoration project – is a well-recognized form of mitigation. Where possible, the responsible Washington agencies should develop

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<sup>120</sup> See Courtney Flatt, *Could the Northwest’s basalt rocks help slow climate change?* Oregon Public Broadcasting (June 4, 2023) (available at: <https://www.opb.org/article/2023/06/04/could-the-northwests-basalt-rocks-help-slow-climate-change/>).

standard mitigation measures based on the best available science and in consultation with all interested communities. For example, New York provides a mechanism for project developers to fund wildlife protection measures where impacts to threatened or endangered species cannot be avoided. In Washington, mitigation for renewable energy development in the Columbia Basin could take the form of purchasing marginal farmland or degraded sage steppe habitat,<sup>121</sup> that would then be restored to support ecosystem functions, with a specific acreage ratio (for example, two acres of restoration for each acre disturbed, similar to common wetlands mitigation requirements) required. Other examples might include: (1) mitigation measures for farmland used for solar developments based on agrivoltaics,<sup>122</sup> as appropriate for growing conditions in our state, and newly-adopted legislation<sup>123</sup> encouraging pollinator habitat in landscaped areas; and, (2) for unavoidable impacts on anadromous fish habitat, mitigation through support of restoration of riparian areas, which are critical habitat for juvenile fish.

- ***Expanded Use of Standardized Permits and Categorical Exclusions.*** The USFWS recently issued nationwide permits governing protection of raptors under the BGEPA and allied legislation, as discussed above. WDFW should adopt these, or similar standard permits, because they allow renewable energy projects to proceed without further permitting if the projects meet the conditions specified in the permit and the conditions are supported by NEPA analysis. Those conditions are developed to assure protection of the species if the specified conditions are met. Similarly, the U.S. Department of Energy recently revised its list of categorical exclusions, which exempt the excluded activities from environmental review, to address new technologies like energy storage and advanced technologies that allow existing transmission lines to carry increased power flows. Similar categorical exclusions should be adopted under SEPA to allow deployment of these kinds of technologies.
- ***Standards and Protocols for Environmental and Cultural Surveys.*** One complaint we have heard from a number of developers and consultants is that expectations for how field surveys are to be conducted are unclear, resulting in repeated redos of surveys, with attendant expense and delay. To address this, responsible Washington agencies should set forth and abide by clear standards and protocols for field surveys and environmental justice analyses. One example of such guidance recommended to us by a project developer is the Minnesota Department of Natural Resources' recently-issued [Commercial Solar Siting Guidance](#) document.
- ***Consolidated Permits.*** The Legislature has directed the ICESCC to pursue development of consolidated clean energy permits similar to the Joint Aquatic Resource Application

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<sup>121</sup> As discussed above, the Biden Administration's recent public lands initiative would allow conservation leasing on BLM lands. Because significant portions of the sage steppe ecosystem in Washington are located on BLM lands, this offers a new opportunity for developers to lease and preserve sage steppe habitat, or to restore degraded habitat on leased public lands.

<sup>122</sup> See, e.g., U.S. Department of Energy, Solar Energy Technologies Office, *The Potential of Agrivoltaics for the U.S. Solar Industry, Farmers, and Communities* (April 17, 2023) (available at: <https://www.energy.gov/eere/solar/articles/potential-agrivoltaics-us-solar-industry-farmers-and-communities>).

<sup>123</sup> [SSB 5934](#), signed by Gov. Inslee on March 28, 2024.

and also to explore consolidated clean energy permits.<sup>124</sup> We generally believe such consolidated permitting processes increase the speed and efficiency of permitting, but we have not further analyzed these options because they are outside the scope of this report.

## **B. Permitting Oversight and Information Clearinghouse**

We recommend the adoption of several measures that are aimed at improving the permitting process at all levels. These functions could reasonably be housed in Governor's Office for Regulatory Innovation and Assistance ("ORIA") or in the ICESCC, if those bodies are provided with any necessary legislative authorization and are given sufficient personnel and resources to carry out these functions. We refer to the agency that would be assigned these project oversight functions as the "permitting oversight body." Another alternative worthy of consideration would be the creation of a cabinet-level Department of Energy, Climate, and the Environment, that would house this and other agencies with responsibilities relevant to energy and climate.

The functions assigned to the permitting oversight body are aimed at improving pre-application and other upfront processes to surface potential problems as much as possible before a final permit application is filed, and to support Tribes, local government agencies, and interested individuals by providing information and technical support related to clean energy projects.

The specific functions performed by the permitting oversight body would include:

### **(a) Washington Permitting Dashboard**

Implement a Washington State permitting dashboard based on the federal FAST-41 model. The dashboard would:

- Track the progress of all proposed clean energy projects through the permitting process, with the possible exception of smaller generators (under 20 MW capacity),

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<sup>124</sup> RCW 43.394.020(3)(b)-(c).

- for example) moving through local permitting processes. A state permitting dashboard establishes deadlines and provides transparency to the public, stakeholders, and lawmakers that keeps agencies accountable and assists the legislature in identifying areas of improvement for permitting. In addition, the dashboard will reveal agencies that are chronically late in meeting permitting deadlines and corrective action, such as assigning management personnel to ensure timely action or providing additional resources, can be taken.
- Require state agencies involved in a project subject to the FAST-41 process to participate in the federal dashboard applicable to such projects. Currently, state agencies are allowed to participate in the FAST-41 process, but are not required to do so.
  - Guided by a project management expert, include specific deadlines for each involved agency to act, coordinate agency actions involving studies to avoid duplication and minimize the time required for studies, and designate individuals from each involved agency to be responsible for that agency's involvement in a particular project. If an agency anticipates that it will not meet a deadline, it may seek an extension but must do so at least thirty days prior to the deadline. Deadlines would include: a specific date by which an agency must declare an application complete or else seek additional information from the applicant, deadlines to complete all required environmental analysis consistent with other deadlines recommended below, coordinate with state and federal agencies involved in environmental analysis to ensure the maximum use of existing information (notably including information developed in ongoing non-project environmental analyses) and minimize duplication of information requirements, and final deadlines for each agency to act.

#### **(b) Information Clearinghouse**

To assist project developers, local governments, Tribes, and the public in understanding the technical aspects of clean energy infrastructure, to help identify sites that are most likely to be free of conflicts, and to maximize the value of pre-application procedures, the permitting oversight body would provide the following services:

- i. Mapping.* A great deal of mapping information already exists, including, for example, DNR's clean energy screening function,<sup>125</sup> Washington State University's work

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<sup>125</sup> DNR Clean Energy Parcel Screening website, <https://www.dnr.wa.gov/cleanenergymap>.



on the least-conflict solar process,<sup>126</sup> similar work done by federal agencies,<sup>127</sup> and maps identifying protected lands, private lands, lands with high potential for renewable energy development, existing transmission lines, etc. In addition, both the state and federal governments have published maps identifying environmental justice communities.<sup>128</sup> This information should be gathered in one place to create a one-stop shop to help project developers identify sites that will present the lowest potential for conflict, and to assist state and local agencies, Tribes and other interested parties to identify areas of concern and suggest measures to avoid or mitigate those concerns as early in the process as possible, and to identify overburdened communities that must be taken into account in project planning and assessment, as well as assisting developers to address environmental justice requirements. Of course, appropriate measures will need to be in place to protect confidential information (locations of sensitive Tribal cultural resources, for example). In addition, to the extent conflicting maps exist – we have heard from developers that habitat maps for sensitive species, for example, sometimes conflict – the permitting oversight body would work to resolve these conflicts and provide definitive maps.

*ii. Least-Conflict Process.* Building on the least-conflict work already carried out by Washington State University with respect to solar development on the Columbia Plateau,<sup>129</sup> the permitting oversight body should convene appropriate sets of stakeholders

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<sup>126</sup> Washington State University Energy Program, *Report to the Washington Legislature: Least-Conflict Solar Siting on the Columbia Plateau* (June 2023);

<sup>127</sup> See, e.g., BLM Solar Energy Zones website: <https://blmsolar.anl.gov/competitive/other-procedures/sez/>

<sup>128</sup> See, e.g., Washington Environmental Health Disparities Map website: <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map>.

<sup>129</sup> See note 123, *supra*.

and Tribes to identify least-conflict areas for other clean energy technologies and in other parts of the state if those technologies are likely to be deployed widely across the state.<sup>130</sup>

*iii. Renewable Energy Zones.* Using maps, areas that have been identified by state and federal land management agencies for priority renewable energy development, input from interested Tribes and stakeholders, and the results of the mapping and least-conflict processes recommended above, the permitting oversight body would identify Renewable Energy Zones, areas characterized by strong solar, wind or other renewable resources, that can be linked to existing transmission infrastructure with relatively modest effort, and that have the least potential for conflict in the permitting process. The permitting oversight body could be delegated authority to name Renewable Energy Zones or it could recommend to the Legislature new Renewable Energy Zones beyond those that the Legislature may designate in response to recommendations required from the ICESCC by Section 302(7) of HB 1216. Renewable energy development would then be prioritized in these zones by, for example, transmission development facilitated by the Washington Renewable Energy Authority (discussed below), preparation of non-project environmental analyses covering the zones, and other measures to expedite permitting in these zones.

*iv. Technical Assistance.* Many local governments, members of the public (including members of overburdened communities), and Tribes have expressed concerns that they lack expertise and understanding of renewable energy and clean economy technologies. The permitting oversight body would collect information on technologies that are most

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<sup>130</sup> The Legislature recently mandated a similar process to help identify desirable sites for geothermal energy development. See [SB 6039](#), signed by Gov. Inslee on March 28, 2024.

commonly being sited in Washington, including information gleaned from non-project environmental reviews, and provide that information to interested parties through its website, with assistance provided to understand the information where needed. The permitting oversight body would also provide expert advice to local governments and Tribes concerning these technologies, including potential environmental impacts and common mitigation measures.

v. ***Pre-Application Roundtable.*** For projects in the planning and pre-application phase of development, the oversight body should provide contact information for key government bodies, Tribes, community-based organizations, non-governmental organizations, and other interested parties, to facilitate early resolution of potential disputes. For Tribes that prefer government-to-government contact rather than direct contact with project developers, a mechanism is needed to ensure that there is a consistent and reliable conduit for communications with the Tribe that are relevant to a proposed project. In addition, the oversight body should assist willing developers by identifying known issues in the proposed project area that might create permitting problems, and by facilitating meetings with the project developer and all interested parties to identify and seek mutually agreeable solutions to objections that might otherwise slow or derail the permitting process. Early, voluntary resolution of disputes is much preferred by all parties as a way to avoid, for example, formal EFSEC adjudications on disputed issues, which are expensive and time consuming, and can create unpredictable outcomes.

**vi. Community Engagement.**

**(a) Community Benefits and Labor Agreements.** The permitting oversight body, with assistance from interested organizations and individuals, would also provide guidance to project developers and overburdened communities by developing a database of standardized community benefits agreements and labor agreements, as well as tracking the costs to project developers and consumers, and benefits of these agreements, and determining whether benefits are reaching the intended beneficiaries. The oversight body would also provide mediation services where necessary to facilitate agreements between project developers and community representatives.

**(b) Facilitation Services:** The oversight body would provide project proponents and agencies with guidance on best practices for engagement with Tribes, overburdened communities, and local agencies. Where necessary, the oversight body would provide translation services to ensure that immigrant communities and other communities with a substantial number of non-native English speakers can be fully represented in the permitting process.

**C. EFSEC Reforms**

Building on the changes to EFSEC enacted in SB 1812,<sup>131</sup> we recommend the following additional changes to RCW Chapter 80.50:

- **Standard for Project Approval:** To set a clear statutory standard that developers must meet and for when EFSEC must approve a project, we recommend new language, based on language contained in the statutes for EFSEC equivalents in several states (Michigan, California, New York) and the Legislature’s statement of intent in RCW 80.50.010. The following language would be added to RCW 80.50.100 as a new subsection 3:

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<sup>131</sup> Section 1 of SB 1812 added language to the Legislature’s statement of intent for EFSEC (RCW 80.50.010) that EFSEC should, for example, “encourage the development and integration of clean energy sources” in Washington. But intent language is merely precatory and we recommend mandatory language clarifying how EFSEC should exercise its authority.

The Council shall recommend that the Governor approve an application for an alternative energy resource, a clean energy manufacturing facility, or an electric transmission facility if:

- (a) The public benefits of the applicant's project, including the benefits of greenhouse gas reductions (as measured using the social cost of carbon as determined by the federal Interagency Working Group on the Social Cost of Carbon), tax benefits, community benefits, job creation, and energy benefits, justify construction;
- (b) The applicant's project avoids, minimizes, or mitigates, to the maximum extent practicable, any potential significant adverse environmental impacts related to the siting, design, construction and operation of the project;
- (c) The applicant's project avoids or minimizes to the maximum extent practicable, any potential significant adverse impacts on historical, archaeological, and cultural resources;
- (d) The project, including mitigation measures, provides a net positive impact with respect to threatened and endangered species that are reasonably expected to be affected by the project;
- (d) The applicant has entered into community benefit or labor agreements, or has otherwise taken measures, to assure that the project minimizes impacts to overburdened communities and vulnerable populations, as those terms are defined in RCW 70A.02.010, and that a reasonable share of the project's environmental and economic benefits are provided to overburdened communities and vulnerable populations in the vicinity of the project;
- (e) The applicant's project does not present an unreasonable threat to health and safety, which standard shall be met if the project meets the requirements of the local standards specified [RCW cite to legislation discussed below – proposal to limit local discretion on renewable projects]; and,
- (f) The applicant has agreed to reasonable requirements for project decommissioning that ensure, to the maximum extent practicable, that project components are reused, refurbished, or disposed of in a manner consistent with state and federal requirements for waste disposal or recycling, and that lands affected by the project are restored to their pre-project condition to the maximum extent practicable.

Additional recommendations include:

- **Reformulate EFSEC Governing Body:** As noted, EFSEC is governed by a group of agencies with specific missions. Many observers believe that, because the agency lacks an independent director body charged with balancing the state's overarching goals with respect to clean energy against the goals of the agencies, EFSEC tends to pursue the statutory missions of these agencies to the maximum extent, without adequate counterbalance for statewide goals such as clean energy development. This balancing

function should be assigned to a specific individual or body within EFSEC that is independent of both the agencies involved in regulating proposed projects and the developers seeking to permit projects. We recommend that this function be assigned to one to three paid directors with significant experience in the energy industry and with related permitting issues, to be appointed by the Governor with the advice and consent of the Senate. The requirements would be similar to those governing the Pollution Control Hearings Board. RCW 43.21B.020. The director(s) would be tasked with making the final decision under the standard set forth above, based on input from all agencies, Tribes, local governments, individuals, and other interested parties involved in a particular application.

- ***Adopt Clear Standards:*** A common complaint about the EFSEC process is that it lacks clear standards and instead relies on a drawn-out SEPA process to develop permit conditions that are often arrived at on an ad hoc basis, creating great uncertainty for project developers. To address this problem, in addition to the statutory language set forth above, we recommend that EFSEC develop technology-specific standards that spell out specific requirements for, for example, wind energy projects, battery storage projects, and pumped storage projects. The Oregon Energy Facilities Council has adopted such standards,<sup>132</sup> which may serve as a template for revised EFSEC standards.<sup>133</sup> In addition, EFSEC should adopt standardized mitigation measures, as discussed above.
- ***Standard Reforms:*** EFSEC should adopt the time limits, page limits, and other reforms to the SEPA process discussed above. It should also employ standardized “nationwide” permits (like those recently adopted for raptors by the USFWS), standard mitigation procedures, and standardized survey protocols to the greatest extent possible. Finally, all EFSEC projects should be included in the Washington Permitting Dashboard.
- ***Minimize Contested Adjudications:*** A common denominator in EFSEC processes that have been successful in issuing recommendations within the one-year statutory timeline appear to be successful upfront resolution of disputes through, for example, revisions to project proposals to avoid a SEPA determination of significance or informal resolution of disputes. To encourage this approach, we propose two changes to the EFSEC statute. First, the current statute requires that, before the Council issues its recommendation to the Governor, it hold a public hearing “conducted as an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act.” Given that the record has already been developed at this stage, in many cases there is no good reason to require a formal adjudication, which involves formal briefing, judicial-style procedural rules, formal testimony, cross-examination, and other procedures typical of a court trial. The statute should be amended to allow EFSEC to make its determination based on a non-adjudicative public hearing. Any amendment should, of course, allow EFSEC the discretion to conduct adjudicative hearings where necessary to resolve legal or other

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<sup>132</sup> See [OAR Chapter 345, Title 24](#).

<sup>133</sup> As noted above, EFSEC recently developed a standard application for solar facilities that may serve as a useful model that can be expanded to other clean energy technologies. However, we have been unable to access sufficient information about the solar application to make any specific recommendation about it.

disputes that require quasi-adjudicative processes. Second, EFSEC should offer mediation services employing a trained mediator to encourage opposing parties to come to agreement on specific concerns so as to minimize the use of formal adjudications to resolve disputes. Adjudications were generally disfavored by both applicants and others involved in EFSEC processes because they are expensive and time-consuming, with unpredictable outcomes since disputes are resolved by a hearing officer's opinion. EFSEC could either retain its own trained mediation staff, similar to the model used at FERC and other federal agencies with similar quasi-adjudicative processes, where a mediation staff is available to help parties voluntarily resolve disputes. Another alternative would be for a dedicated and trained mediation staff to be developed through the Office of Administrative Hearings that could be available to other agencies, as well as EFSEC.

#### **D. Local Government Reforms**

Based on recent legislation adopted in Illinois, Michigan and other states, we recommend that the Legislature enact limits on the burdens local governments can impose on renewable energy developments, that would include:

- ***Maximum Setbacks/Buffers.*** Local governments would be permitted to require setbacks or buffers up to a maximum but no more. For example, counties would be permitted to establish a setback for solar projects of up to 150 feet from occupied dwellings and for wind projects, require a setback of up to two times maximum blade height from occupied dwellings, but no more. Similarly, local governments would be permitted to impose the same buffers on such facilities as it imposes on other developments to protect critical areas such as wetlands, but would not be permitted to impose larger buffers.
- ***No Moratorium.*** Except for specific technologies that are not addressed through legislation, local governments would not be permitted to establish moratoriums on renewable energy projects, electric transmission projects, or clean energy product manufacturing facilities, but could require those projects to pay impact fees, obtain construction and grading permits, and impose other requirements on the same basis as the local government treats other developments. Local governments would also be required to allow meteorological towers and other equipment and processes necessary for identifying sites with strong renewable energy potential, with conditions imposed on these activities no more restrictive than conditions imposed on other similar activities. For technologies that are not addressed specifically by legislation, moratoria would be limited to the time reasonably necessary for local governments to gather necessary information to address the proposals, but in no case more than one year.
- ***Agricultural Lands.*** Local governments would not be permitted to bar energy developments on all agricultural lands, but could limit development on the highest-value agricultural lands. In addition, local governments would be permitted to require

mitigation measures consistent with statewide requirements for, for example, agrivoltaics and preservation of pollinators,<sup>134</sup> and for decommissioning and restoration of farmlands after a project reaches the end of its useful life.

- ***Time Limits.*** Local governments would be required to process permits for smaller renewable energy projects (25 MW capacity or below) within 60 days and within 120 days for larger projects.<sup>135</sup>
- ***Transmission Corridors.*** Local governments would be required to permit construction and operation of electric transmission facilities, lines to carry renewable natural gas, and other linear facilities necessary for clean energy projects on corridors identified by the Washington Renewable Energy Authority. Local governments would be permitted to impose conditions on transmission, including construction of generator tie lines, that are no more restrictive than conditions imposed on similar kinds of construction.

#### **E. Washington Renewable Energy Authority**

Based on models from New York, New Mexico, Wyoming, and Colorado, we recommend that Washington create a Renewable Energy Authority (“WREA”) with the following powers:

- ***Transmission Planning & Coordination:*** WREA would work with other states, the Bonneville Power Administration, regional transmission planning bodies, Canadian authorities, and relevant federal agencies to identify planned transmission projects that may reach Washington or support transmission of renewable energy into Washington, and to participate in the process of developing National Interest Electric Transmission Corridors (“NIETCs”) <sup>136</sup> in the Pacific Northwest. WREA would work with these other agencies and bodies to ensure that transmission corridors developed in Washington will connect with these regional transmission lines in a manner that best serves Washington electricity consumers. WREA would be empowered to enter into Memorandums of Understanding or other appropriate contracts with these entities to promote development of a cohesive transmission network. WREA should particularly focus on ensuring that adequate transmission is available to import renewable energy from regions outside the state that are likely to be important renewable energy sources. This would include, for example, areas slated for development of offshore wind in California and Oregon (which are likely to develop these resources several years before they may be developed on

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<sup>134</sup> See [SB 5934](#) (signed March 28, 2024) (providing for protection of pollinators),

<sup>135</sup> As noted above, the Illinois legislation we have used as a model includes much shorter timelines. We recommend longer timelines based on our experience with Washington permitting processes taking into account the fact that the legislation we recommend would foreshorten the time necessary to consider setbacks and other mitigation measures.

<sup>136</sup> On January 8, 2024, the U.S. Department of Energy issued [Guidance](#) laying out a four-step process it will use to define NIETCs and on May 8, 2024, issued its [preliminary list](#) of ten NIETCs, including a NIETC running from southern Nevada to north-central Oregon that is designed to allow importation of renewable energy from the southwest that will help the Pacific Northwest meet expected needs for carbon-free energy. It also includes a corridor running from eastern Montana to the Great Plains, which may provide a conduit for electric customers in the Pacific Northwest to access the strong wind and solar resources available in the Wyoming, Montana, and the Dakotas.



Washington’s outer continental shelf), and areas with strong wind and solar resources in Wyoming and Montana. The Legislature should consider either transferring these authorities to WREA or else requiring WREA to work with EFSEC on issues where EFSEC has assigned duties.<sup>137</sup>

- ***Development of Transmission Corridors:*** WREA would be empowered to identify, obtain rights of way or easements for, and obtain permits for transmission to be constructed on key corridors. Key transmission corridors would connect Renewable Energy Zones (discussed above) with population centers and/or existing transmission infrastructure and would focus on new transmission corridors and on existing transmission that requires major upgrades to accommodate the energy anticipated to be generated in the Renewable Energy Zone. WREA would be provided with eminent domain authority to assemble transmission corridors and with authority to enter into Memoranda of Understanding and other documents necessary to formalize cooperative arrangements. Once a transmission corridor is identified and permits are obtained, WREA would sell the rights to develop to parties interested in constructing transmission. WREA would focus on Renewable Energy Zones to help ensure that the new transmission will be highly valuable and it therefore can recover its costs for identifying and developing the corridor and obtain the permits necessary to construct transmission. Corridors should also be available for other linear facilities that support GHG reductions, including pipelines transporting biogas or landfill gas, carbon dioxide bound for carbon sequestration facilities, green electrolytic hydrogen, and tie lines that connect renewable generators with the existing or planned transmission grid.
- ***Build-Ready Renewable Energy Development:*** WREA would be empowered to identify sites with high renewable energy potential and obtain land rights (generally option agreements), transmission rights, and permits for those sites, then sell the site to project developers when the project is “build-ready,” with permitting completed and land and transmission rights secured. WREA would focus on brownfields development (for example, energy development on abandoned mines or industrial sites) and on other sites likely to have minimal environmental impacts, such as highly degraded farmland, degraded sage steppe habitat that could be allowed to recover while occupied by a renewable energy facility, and industrial forest lands that have been subject to repeated cycles of logging. In addition, WREA would be empowered to obtain development rights on state and federal lands.

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<sup>137</sup> The Legislature has designated EFSEC as the authority to “consult with” federal and state agencies and Tribes “regarding appropriate limits on federal authority” for siting of transmission corridors in Washington, designates EFSEC as the “state authority” for purposes of the NIETC process, permits EFSEC to approve transmission facilities on NIETCs, and to coordinate the state’s participation on NEPA analysis for electric transmission projects “proposed or sited by a federal agency.” RCW 80.50.045. We note that Washington’s utilities and joint operating agencies (Energy Northwest) have authority to build and operate transmission facilities, including the power of condemnation. *See, e.g.*, RCW 43.56.300(1)-(2) (joint operating agencies); RCW 54.16.020 & .040 (public utility districts). Our recommendation essentially combines these authorities and adds the duty to develop transmission corridors and to enter into MOUs with other entities involved in transmission planning and permitting, transmission corridor development, and transmission construction.

## CONCLUSION

Washington policymakers can gain significant insights from the approaches taken in other jurisdictions facing a dilemma similar to Washington's – the need to rapidly build out clean energy infrastructure to address climate change without undermining laws aimed at protecting the environment, cultural and historical resources, and other values, while at the same time reducing burdens on overburdened communities. We believe the reforms laid out in this report can build on significant reforms already adopted by Washington lawmakers and agencies to achieve these goals.

## APPENDIX A

### WASHINGTON CLIMATE LEGISLATION

The major legislative pillars of Washington’s efforts to reduce its GHG emissions are:

- **GHG Reduction Targets:** In 2008, the Washington Legislature adopted a policy to limit the state’s GHG emissions to 1990 levels by 2020, to 25% below 1990 levels by 2035, and to 50% below 1990 levels by 2050.<sup>138</sup> In 2020, the Legislature strengthened those goals. It specified that the 1990 level of GHG emissions was 95.5 million metric tons, and now requires the state to limit its GHG emissions to 45% below 1990 levels (50 million metric tons) by 2035, 75% below 1990 levels (27 million metric tons) by 2040, and 95% below 1990 levels (5 million metric tons) by 2050 and thereafter.<sup>139</sup> The 2008 legislation did not include legal mechanisms to achieve these goals, but directed the Department of Ecology (“Ecology”) to promulgate rules requiring the reporting of GHG emissions and also directed Ecology and other state agencies to recommend legislation that would achieve these goals.<sup>140</sup>
- **Decarbonization of the Electricity Sector:** In 2019, Washington adopted the Clean Energy Transformation Act,<sup>141</sup> which requires electric utilities to phase out all coal-fired electric generators serving consumers in Washington by 2025 and requires utilities to provide Washington electricity consumers with carbon-neutral electricity by 2030. It also commits Washington to 100% non-emitting electricity sector by 2045.
- **Building Decarbonization:** In 2019, Washington enacted energy performance and benchmarking standards for large commercial buildings, aimed at reducing the GHG

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<sup>138</sup> Chap. 14, Wash. Laws of 2008 § 3.

<sup>139</sup> Chap. 79, Wash. Laws of 2020 § 2, codified at [RCW 70A.45.020](#).

<sup>140</sup> Chap. 14, Wash. Laws of 2008 §§ 4-5.

<sup>141</sup> RCW Chap. 19.405.

emissions from both existing and future buildings.<sup>142</sup> These were significantly amended in 2022 and again in 2023.<sup>143</sup> As amended, the law requires buildings with a floor area of 20,000 square feet or more to benchmark their GHG emissions and to meet GHG intensity targets set by Ecology that become effective in 2026 for large buildings and in 2027 or 2028 for smaller buildings. The GHG intensity targets are set based on the average energy use for specific building uses, with incentives provided for building owners that exceed those targets by 15% or more.<sup>144</sup> In late 2023, the City of Seattle, Washington’s largest city, enacted a [Building Efficiency Performance Standard](#) that creates more stringent requirements for buildings to reduce GHG generation.<sup>145</sup>

- **Methane and Hydrofluorocarbons (“HFCs”):** In 2019, Washington enacted legislation, which complements federal legislation with the same aim, intended to reduce the state’s emissions of HFCs, a refrigerant that is also a powerful GHG.<sup>146</sup> Legislation has been enacted to address the state’s emissions of methane, another powerful GHG. These include a requirement that Washington natural gas utilities offer a program where consumers may purchase renewable natural gas,<sup>147</sup> which is natural gas produced by biological processes like decomposition of waste at landfills or from anaerobic digestion of animal waste, as opposed to fossil natural gas. Legislation has also been enacted to limit methane emissions from landfills<sup>148</sup> and to facilitate the use of biogas and landfill gas in Washington’s climate and clean energy programs.<sup>149</sup>

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<sup>142</sup> Chap. 285, Wash. Laws of 2019.

<sup>143</sup> Chap. 177, Wash. Laws of 2022; Chap. 291, Wash. Laws of 2023.

<sup>144</sup> [RCW 19.27A.200-270.](#)

<sup>145</sup> SMC Chapter 22.295.

<sup>146</sup> [RCW Chapter 70A.60.](#)

<sup>147</sup> [RCW 80.28.385-390.](#)

<sup>148</sup> RCW Chapter 70A.540.

<sup>149</sup> *See, e.g.*, RCW 19.285.030(21); RCW 70.65A.080.

- **Reduction of GHGs from Transportation:** Washington has adopted legislation to reduce GHG emissions from transportation, which is the state’s largest source of GHG emissions. The legislation works in two ways. First, the legislature has adopted several measures to encourage the electrification of transportation or the use of alternative fuels. 2019 legislation authorizes electric utilities regulated by the UTC, which serve roughly half of Washington’s citizens, to submit transportation electrification plans to the UTC for approval,<sup>150</sup> and to receive an incentive rate of return for construction of electric vehicle charging equipment.<sup>151</sup> Public Utility Districts (publicly-owned utilities that serve the other half) are also authorized to adopt plans for the electrification of transportation.<sup>152</sup> The legislation also includes tax incentives and other measures to encourage the electrification of the state’s vehicle fleet and ferries, and to encourage alternative transportation fuels such as hydrogen and sustainable aviation fuel.<sup>153</sup>

To complement vehicle electrification, in 2021, the Legislature enacted and Governor Inslee signed the Clean Fuel Standard,<sup>154</sup> which requires motor fuels sold in Washington to meet increasingly stringent limits on the GHG intensity of those fuels, culminated in a requirement that such fuels in Washington have a carbon intensity 20% below 2017 levels by 2038, with the limit decreasing yearly between 2022 and 2038.<sup>155</sup> The program also includes a mechanism by which sellers of fuel with a low carbon intensity, such as biofuels, that are below the required GHG intensity level can sell credits to fuel sellers whose products are above the applicable limit as a means for the

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<sup>150</sup> RCW 80.28.365.

<sup>151</sup> RCW 80.28.360.

<sup>152</sup> RCW 54.16.430.

<sup>153</sup> RCW 82.04.4496; 82.08.816.

<sup>154</sup> [RCW Chapter 70A.535](#).

<sup>155</sup> RCW 70A.535.025.

latter to achieve compliance.<sup>156</sup> Notably, credits can be earned for vehicle electrification.<sup>157</sup> The program includes incentives aimed at encouraging the expansion of biofuel production capacity in Washington.<sup>158</sup>

In November 2023, the Washington State Department of Transportation finalized a Statewide [Transportation Carbon Reduction Strategy](#) (TCRS) as a requirement by USDOT for state recipients of federal Carbon Reduction Program funds. The TCRS builds on the [State Energy Strategy](#), and describes the policy framework necessary to reduce future transportation carbon emissions to meet state GHG reduction goals. The strategy focuses on two categories that work together to reduce transportation emissions: move people and goods more efficiently and equitably; and, electrify vehicles and switch to low-carbon fuels. Together, the State Energy Strategy and TCRS create a statewide plan for transportation carbon reduction.

- **Economy-Wide Cap-and-Invest Program:** In 2022, Washington enacted the Climate Commitment Act (CCA),<sup>159</sup> which sets an economy-wide cap on the state’s GHG emissions and requires all facilities that emit more than 25,000 metric tons of carbon dioxide-equivalent to obtain credits to cover all their GHG emissions. The cap declines over time so that statewide emissions are 95% below 1990 levels by 2050. Allowances are purchased at quarterly auctions and the revenues from the auctions are to be directed toward programs approved by the Legislature in the CAA, which are generally aimed at improving the state’s climate resiliency, addressing problems in overburdened

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<sup>156</sup> RCW 70A.535,050.

<sup>157</sup> RCW 70A.535,050(1)(c) & (d).

<sup>158</sup> RCW 70A.535,025(6); RCW 70A.535,050(1)(b).

<sup>159</sup> [RCW Chapter 70A.45](#).

communities, and improving access to vehicle charging stations and otherwise supporting electrification of the state's transportation sector.

**APPENDIX B**

**SUMMARY OF MAJOR STATE AND FEDERAL ENVIRONMENTAL LAWS**

Subject Matter of Law	Citation to Law	Description of Key Requirements	Notable Recent Developments
Environmental Protection – Federal	National Environmental Policy Act - 42 U.S.C. §§ 4321 <i>et seq</i>	Requires federal agencies to produce detailed documentation concerning major Federal actions that significantly affect the quality of the human environment. Also requires analysis of the environmental impact of the proposed action, alternatives to the proposed action, and any irreversible damage to resources in the event the proposed action is implemented. If triggered, the agency must conduct an Environmental Assessment (“EA”), and if appropriate, an Environmental Impact Statement (“EIS”), which is a more intensive, lengthy process.	Congress included NEPA Reforms in the Fiscal Responsibility Act of 2023. The new statute largely codifies practices that have been developed since NEPAs inception in 1969, including a requirement that a lead agency be designated where two or more federal agencies are involved. The new statute also imposed two important requirements. First, that EISs are required to be completed within 2 years after an agency determines that a federal action can have major environmental impacts. Second, that EAs and EISs are limited to 75 and 150 pages, respectively, with limited exceptions for complex projects and appendices.
Environmental Protection – State	Washington State Environmental Policy Act – Chapter 43.21C RCW	Covers any government action defined in the statute’s rules that is not categorically exempt. When an applicable action is proposed, the lead	



		agency then evaluates whether there will be a significant environmental impact and then issues a determination of non-significance, mitigated determination of non-significance, or determination of significance. Should the agency issue a determination of significance, it must then prepare a full environmental impact statement.	
Clean Water – Federal	Clean Water Act – 33 U.S.C. §§ 1251 <i>et seq</i>	Section 402 of the CWA governs discharges of pollutants into waters of the United States from point sources. Facilities discharging pollutants covered by Section 402 must obtain a NPDES Permit that sets forth specific limits on the amounts of particular pollutants the facility is allowed to discharge. Section 404 establishes a program to regulate the discharge of dredged and fill materials into waters of the United States and is the primary federal program for wetlands protection. If a project impacts wetlands subject to federal jurisdiction, it must obtain a permit which limits the amount of wetlands that may be disturbed.	On May 25 <sup>th</sup> , the Supreme Court issued its decision in <i>Sackett v. EPA</i> holding that the Clean Water Act extends to wetlands only if they have a continuous surface connection to relatively permanent bodies of water. EPA has since adopted regulations that mirror this decision.
Clean Water – State	Water Pollution Control Act – Ch. 90.48 RCW	Regulates any discharges of pollutants into waters that are not subject to federal regulation. The	In September 2023, EPA issued new rules governing state certifications under

		Department of Ecology also exercises authority under Section 401 of the CWA to provide water quality certifications to any federally permitted projects that discharge pollutants into state waters.	CWA Section 401. Among other changes, the new rules provide procedures for establishing a “reasonable time” for a state agency to process a request for certification, which (by statute) may not exceed one year.
Coastal Management – Federal	Coastal Zone Management Act – 16 U.S.C. §§ 1451 <i>et seq</i>	Governs shorelines abutting saltwater.	
Coastal Management – State	Shoreline Management Act – Ch. 90.58 RCW	Requires all counties and most towns and cities to develop shoreline management programs with a focus on local development and focus.	
Historic and Archaeological Resources – Federal	Antiquities Act of 1906 – 16 U.S.C § 431 <i>et seq</i>	Provides for general legal protection of cultural and natural resources of historic or scientific interest on federal lands.	
Historic and Archaeological Resources – Federal	National Historic Preservation Act of 1966, 16 U.S.C. §§ 470a <i>et seq.</i>	Created permanent institutions and creates a clearly defined process for historic preservation. Also requires states to take on more responsibility for historic sites. Section 106 requires federal agencies to consider the impact of their actions on historic properties and provide an opportunity for comment on projects prior to implementation.	
Historic and Archaeological Resources – Federal	Archeological and Historic Preservation Act of 1974 – 16 U.S.C. §§ 469 <i>et seq.</i>	Requires federal agencies to preserve historic and archaeological objects and materials that would otherwise be lost or destroyed as a result of	

		their projects or licensed activities or programs.	
Historic and Archaeological Resources - Federal	Native American Graves Protection and Repatriation Act – 25 U.S.C. §§ 3001 <i>et seq.</i>	Requires any entity that receives federal funding to abide by certain requirements related to preservation and repatriation when Native American human remains or cultural items are located. Failure to comply with the requirements can result in civil or criminal penalties.	
Historic and Archaeological Resources - Federal	American Indian Religious Freedom Act – 42 U.S.C. § 1996	Protects the rights of Native Americans to exercise traditional religions by ensuring access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.	
Wildlife Protection - Federal	Endangered Species Act – 16 U.S.C. §1531 <i>et seq</i>	Governs protection of threatened and endangered species and their critical habitats. Once listed, the ESA generally prohibits the “take” of an endangered species. If a government action, including approval of a permit, may affect a listed species or designated habitat, it must undertake a biological assessment. If this assessment shows there is an adverse effect on species or habitat, then agency must obtain a biological opinion that includes an incidental take statement, which can authorize the take of the species.	On March 28, 2024 the Federal Government released three final rules that significantly change the existing legal landscape. First, it revised regulations for listing species and designated critical habitat to bolster environmental protections. Second, it revised consultation requirements triggered under Section 7, expanding and clarifying the scope of these requirements. Third, the government reinstated a rule that increases protections for threatened species

			and granted a new exception for Tribes related to the take of threatened species.
Wildlife Protection – Federal	Migratory Bird Treaty Act of 1918 – 16 U.S.C. § 703 <i>et seq.</i>	Implements four international conservation treaties that the U.S. entered and is intended to ensure the sustainability of populations of all protected migratory bird species. Prohibits the take of any protected migratory bird species without prior authorization by the Department of Interior and U.S. Fish and Wildlife Service.	
Wildlife Protection – Federal	Marine Mammal Protection Act – 16 U.S.C. §1361 <i>et seq</i>	Sets forth a national policy to prevent marine mammal species and population stocks from diminishing as a result of human activities. Imposes a general prohibition on the taking and importing of marine mammals, subject to some exceptions.	
Wildlife Protection – Federal	Bald and Golden Eagle Protection Act - § 16 U.S.C. 668 <i>et seq</i>	Prohibits anyone without a permit issued by the Secretary of the Interior from taking bald or golden eagles, including things like feathers, nests, or eggs.	On February 12, 2024, the United States Fish & Wildlife Service published a final rule that created several general permits under this Act, most aimed at reducing regulatory barriers to wind energy generation. The new permits provide an expedited permitting process and standardized permit condition for projects that pose a low risk of raptor take.

Air Permitting – Federal	Clean Air Act – 42 U.S.C. §§ 4701 <i>et seq</i>	Establishes national air quality standards and regulates emissions including a variety of pollutants. Functions primarily through Title V operating permits and the Prevention of Significant Deterioration Program. Generally, if a project emits pollutants, it must obtain a permit that regulates those emissions.	
Air Permitting – State	Washington Clean Air Act - Chapter 70A.15 RCW	Establishes a statewide program of air pollution prevention and control. Seeks to encourage coordination and cooperation between state, regional, local and federal government.	
Hazardous Materials - Federal	Federal Resource Conservation and Recovery Act – 42 U.S.C. § 6901 <i>et seq</i>	Provides federal authority to control over the generation, transportation, treatment, storage, and disposal of solid and hazardous wastes. Also grants federal authority over underground storage tanks.	
Hazardous Materials -State	Hazardous Waste Management Act - Chapter 70A.300 RCW	Establishes a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste to prevent pollution from hazardous substances.	
Hazardous Waste Cleanup – Federal	Comprehensive Environmental Response, Compensation, and Liability Act – 42 U.S.C. § 9601 <i>et seq.</i>	Provides for liability for the release of hazardous substances at hazardous waste sites by imposing strict liability and joint and several liability on any parties who are responsible for the hazardous waste.	

<p>Hazardous Waste Cleanup - State</p>	<p>Model Toxics Control Act – Chapter 70A.305 RCW</p>	<p>Provides for liability for the release of hazardous substances at hazardous waste sites by imposing strict liability and joint and several liability on any parties who are responsible for the hazardous waste.</p>	
<p>Noise, Light, &amp; Glare - Federal</p>	<p>Noise Control Act - 42 U.S.C. § 4901 et seq</p>	<p>Provides for limited regulation, but establishes effective coordination of Federal research activities and noise control.</p>	

## **APPENDIX C**

### **SUMMARY OF STATE AND FEDERAL ENERGY LAW**

The nation’s complex system of regulation of electric and natural gas utilities plays an important role in regulation of energy markets and intersects with federal, state, and local permitting processes at multiple points. Policy-makers seeking to decarbonize the energy sector need to understand at least the basics of this system.

At least traditionally, utility regulation has been thought of as a matter of economic regulation rather than environmental regulation although the lines between economic and environmental regulation are increasingly blurred. Washington still largely hews to a traditional regulatory structure where federal regulators govern rates and terms of service for high-voltage electric transmission and wholesale electric power sales, while state regulators govern the distribution of power to end-use consumers and the rates those consumers pay for retail sales in territories served by investor-owned utilities, while local distribution and rates for consumer-owned utilities (like PUDs and municipal utilities like Seattle City Light and Tacoma Power) are governed by elected representatives of the PUD or City. A similar division of responsibility has also governed in natural gas regulation, where the federal government regulates natural gas transmission through interstate pipelines and the wholesale market for natural gas while states regulate retail distribution and sales.

The aspects of this regulator system relevant to Washington’s goals for decarbonization of the energy sector are discussed here.

#### **FEDERAL ENERGY REGULATION – TRANSMISSION**

##### **A. The Federal Energy Regulatory Commission (“FERC”) and Electric Transmission**

Any attempt to improve the process of transmission siting and permitting undertaken by the State of Washington must recognize the constraints on state authority that arise from federal law. These constraints arise both from the FERC’s exclusive jurisdiction over the economic aspects to interstate transmission and the involvement of many other federal agencies in the siting and permitting of electric transmission facilities.

### **1. FERC Regulation of Interstate Transmission Facilities**

The Federal Power Act (“FPA”) requires FERC to ensure that any “rate, charge, or classification” for any “public utility” for “any transmission or sale subject to the jurisdiction of the Commission” is “just and reasonable.”<sup>160</sup> The FPA assigns FERC jurisdiction over “the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce” and “over all facilities for such transmission or sale of electric energy,” but specifies that FERC “shall not have jurisdiction. . . over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.”<sup>161</sup>

These provisions give FERC jurisdiction over the economic aspects of interstate transmission facilities, including utility rates and charges for interstate transmission service, and access to those facilities. States retain at least two important roles over transmission: (1) transmission projects are subject to state siting and permitting processes, so a transmission developer must obtain all required federal, state and local permits before transmission can be

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<sup>160</sup> 16 USC § 824e.

<sup>161</sup> 16 USC § 824(b)(1).



constructed; and (2) local distribution facilities and intrastate transmission facilities are subject to state jurisdiction and FERC is prohibited from asserting jurisdiction over those facilities.<sup>162</sup>

FERC has exercised its authority over interstate transmission facilities in several ways that are relevant to the development of renewable energy resources. Of particular importance is FERC's "open access" transmission regime. Since 1996, when it adopted its landmark Order No. 888,<sup>163</sup> FERC has required jurisdictional transmission utilities to provide access to the nation's transmission system to all generation owners, a reform which was intended to encourage a competitive market for electric generation, open to all interested parties. Prior to Order No. 888, construction of new generation had largely been the province of vertically-integrated utilities, who could use their monopoly control of transmission assets to block competitors in the generation market from accessing retail purchasers served by the utility incumbents.

A few years later, recognizing that the lack of standard interconnection procedures was creating unnecessary barriers to entry for non-utility generators, FERC implemented a uniform system for new generation to interconnect with FERC-jurisdictional interconnection facilities.<sup>164</sup> Under current rules, FERC requires generators to file an application for transmission service, to go through a series of studies of the impact of their facilities on the transmission system, and to

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<sup>162</sup> See, e.g., *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 266 (2016) (Section 201 of the FPA "maintains a zone of exclusive state jurisdiction" over functions assigned to states); *New York v. FERC*, 535 U.S. 1, 22-23 (2001) (noting that FPA's legislative history is "replete with statements describing Congress' intent to preserve state jurisdiction over local facilities"); *LSP Transmission Holdings LLC v. Sieben*, 954 F.3d 1018, 1023-24 (8<sup>th</sup> Cir. 2020) (describing state and federal jurisdiction under FPA, noting that states retain jurisdiction over siting, permitting and construction of transmission).

<sup>163</sup> Order No. 888, *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.*, FERC Stats. & Regs. ¶ 31,036 (1996), *aff'd sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002).

<sup>164</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. and Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 744, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir 2007); Order No. 2006, *Small Generator Interconnection Procedures*, 111 FERC ¶ 61,220, at P 8, *order on reh'g*, Order No. 2006-A, 113 FERC ¶ 61,195 (2005), *order granting clarification*, Order No. 2006-B, 116 FERC ¶ 61,046 (2006).

pay for the interconnection facilities identified by those studies. For “Network Upgrades” – the upgrades to the shared transmission grid that must be constructed to accommodate the new generator – FERC follows a “crediting policy.” The generator must fund the Network Upgrades upfront, but, because Network Upgrades benefit all transmission customers generally, the transmission utility is required to refund the Network Upgrade costs to the generator in the form of transmission credits and to include the Network Upgrades in its rate base so that they are paid for by the transmission customers who ultimately benefit from the transmission upgrades.

FERC’s interconnection policy was developed in the early 2000s, when natural gas generation was the preferred technology for new generation and generation was generally added to the system in large and discrete bundles. Unfortunately, FERC’s interconnection policy has proved ill-suited to transition to GHG-free resources, and the interconnection process has been overwhelmed by applications for new renewable generation, resulting in hundreds of thousands of MW of renewable generation capacity waiting in queues for transmission service. Often it takes five years or more for generation projects to move through the queue to obtain transmission service.<sup>165</sup>

It is increasingly clear that limitations on access to the nation’s electric transmission system is the most significant barrier to constructing new renewable generation that will permit attainment of critical decarbonization goals. According to an analysis from Princeton University, the Inflation Reduction Act (“IRA”) could cut U.S. emissions 40 percent by 2030 compared to

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<sup>165</sup> E.g., Lawrence-Berkeley Labs, Energy Markets & Policy, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection* (Apr. 2023) (available at: [https://emp.lbl.gov/sites/default/files/queued\\_up\\_2022\\_04-06-2023.pdf](https://emp.lbl.gov/sites/default/files/queued_up_2022_04-06-2023.pdf)).

2005 levels,<sup>166</sup> nearly reaching the Biden Administration’s goal of a 50% reduction by 2030.<sup>167</sup> But to achieve the full benefits of the Inflation Reduction Act, the nation’s electric transmission capacity must expand at a rate of approximately 2.3% per year, more than double its recent annual average. If transmission expands at its historical pace of about 1% per year, 80% of the benefits of the IRA will be lost. Roughly 25% of the IRA’s benefits will be lost if transmission expands at a rate of 1.5% per year.<sup>168</sup>

Recognizing that transmission expansion remains a serious problem, FERC in 2021 issued an Advanced Notice of Proposed Rulemaking proposing reforms to both transmission planning and interconnection procedures of new generation. In 2023, FERC issued Order No. 2023, which adopted a number of reforms to the interconnection process, including changes aimed at speeding the study process, setting time limits on engineering studies, and adopting requirements aimed at reducing barriers to the use of advanced transmission technology.<sup>169</sup> However, the new rules retain the crediting policy and the basic structure of the interconnection process.

A second FERC order aimed at reforming processes for interregional transmission was adopted on May 13, 2024.<sup>170</sup> Order No. 1920 significantly reforms regional transmission

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<sup>166</sup> Jesse D. Jenkins, *The Inflation Reduction Act and the Path to a Net-Zero America*, Princeton University Zero Carbon Research and Laboratory, Sept. 12, 2022 (available at: <https://cpree.princeton.edu/sites/g/files/toruqf651/files/documents/2022-09-12%20-%20Inflation%20Reduction%20Act%20and%20Path%20to%20Net-Zero.pdf>).

<sup>167</sup> See White House Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies (April 22, 2021) (available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>).

<sup>168</sup> Jesse D. Jenkins *et al.*, *Electric Transmission is the Key to Unlock the Full Potential of the Inflation Reduction Act*, Princeton University Zero Carbon Research and Laboratory, Sept. 22, 2022 (available at: [https://repeatproject.org/docs/REPEAT\\_IRA\\_Transmission\\_2022-09-22.pdf](https://repeatproject.org/docs/REPEAT_IRA_Transmission_2022-09-22.pdf)).

<sup>169</sup> Order No. 2023, *Improvements to Generator Interconnection Procs. & Agreements*, 184 FERC ¶ 61,054 (2023), *order on reh’g*, 186 FERC ¶ 61,199 (2024).

<sup>170</sup> Order No. 1920, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, 187 FERC ¶ 61,068 (2024).

planning and cost allocation requirements. The order arrives more than ten years after Order No. 1000, FERC's last significant transmission planning order, and almost thirty years after the introduction of Open Access Transmission Tariffs ("OATTs") in Order No. 888. Whereas Order No. 1000 focused on the process of regional transmission planning and cost allocation, Order No. 1920 shifts focus to the desired outcomes.

The order requires transmission providers to participate in long-term regional transmission planning covering at least a 20-year planning horizon. The order also requires transmission providers to revise their OATTs to include one or more cost allocation methods based off Order No. 1000 regional cost allocation principles, primarily the principle that the beneficiaries of electric infrastructure should bear the costs of that infrastructure.

## **2. Federal Transmission Jurisdiction in the Pacific Northwest**

The Bonneville Power Administration ("BPA") plays a major, and unique, role in electric transmission in the Pacific Northwest. BPA owns about 75% of the region's high-voltage transmission system. Although BPA is exempt from FERC regulation, it has voluntarily complied with FERC's open access policies, although it has adopted its own policy for transmission interconnections.<sup>171</sup> BPA owns or co-owns several key transmission corridors that are likely to play a critical role in decarbonization of Washington's electricity sector, including the Eastern Intertie, a high-voltage transmission line originally constructed to support the Colstrip coal-fired plant that links areas of Montana with excellent wind and solar energy potential to load centers in the Northwest. Similarly, BPA owns or co-owns interties that link California and the southwest to the Pacific Northwest.

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<sup>171</sup> Documents concerning Bonneville's interconnection process, known as the TSR Study and Expansion Process ("TSEP"), are available here: <https://www.bpa.gov/energy-and-services/transmission/acquiring-transmission/tsep>.

### 3. Federal Transmission Permitting Reforms

While states and local governments have traditionally been responsible for permitting electric transmission infrastructure, Congress has expanded the federal role in constructing transmission for “National Interest Electric Transmission Corridors” or “NIETCs.” Under amendments to the FPA adopted in the 2021 Infrastructure Investment and Jobs Act (IIJA, also often referred to as the “Bipartisan Infrastructure Law”), which were aimed at overcoming judicial decisions that effectively nullified Congress’s initial efforts to establish NIETCs in 2005, Congress has provided FERC with “backstop authority” to permit high-voltage transmission lines in NIETCs. NIETCs are established based on a triennial study of transmission congestion conducted by the DOE that identifies the need for major inter-regional transmission lines based on an analysis of transmission system congestion and establishes NIETCs where major inter-regional transmission facilities are needed to reduce consumer prices and to address national security and similar national interest.

Developers of transmission projects in a NIETC must initially apply for permits from the relevant states but if the state permitting authorities fail to act within a year or deny the facility, then FERC can step in and issue a federal permit that overrides the state’s authority. FERC also may grant eminent domain authority to NIETC projects, which facilitates the project developer’s ability to obtain property rights necessary to build large linear facilities.

In October 2023, DOE issued its [National Transmission Needs Study](#), the first step in designating NIETCs. On December 19, 2023, DOE issued a [guidance document](#) setting forth a four-step process it intends to use to designate NIETCs. On May 8, 2024, issued its [preliminary list](#) of ten NIETCs, including a NIETC running from southern Nevada to north-central Oregon that is designed to allow importation of renewable energy from the southwest that will help the

Pacific Northwest meet expected needs for carbon-free energy and a line in the upper Midwest that could link strong solar and wind resources in that region to the existing transmission system that moves power from Eastern Montana into the Pacific Northwest.

The BLM and U.S. Forest Service are also engaged in designating “Westwide Energy Corridors,” as authorized by Section 368 of the Energy Policy Act of 2005. In 2009, the agencies designated approximately 6,000 miles of Westwide Energy Corridors.” In response to litigation over those designations, the agencies are modifying designations for approximately 673 miles of corridors. That process is now in its final stages and, barring litigation, should be completed in 2024.

The IIJA also included several additional programs aimed at accelerating the construction of electric transmission. These include:

- The “Transmission Facilitation Program,” which authorizes the DOE to act as an “anchor tenant” for construction of high-voltage transmission lines, entering into long-term contracts for up to 50% of the capacity of the new lines, which it can then either sell to private entities or sell under a public-private partnership. The program is supported by a \$2.5 billion revolving loan fund.
- An increase in BPA’s borrowing authority to \$10 billion to support transmission expansion in the Pacific Northwest.
- Authorization to construct transmission facilities to increase the transfer of renewable power between Canada and United States under the Columbia River Treaty.
- A \$3 billion matching grant program to support the use of advanced technology to improve the operation of the nation’s transmission grid. This fund supports a

variety of new transmission technologies that can expand transmission capacity or improve operation of the system quickly and without major construction.

- A \$100 million authorization for BPA to upgrade the pumped storage hydroelectric facilities (a form of energy storage) at the Grand Coulee Dam.

On April 25, 2024, the U.S. Department of Energy announced the [Coordinated Interagency Transmission Authorization and Permits Program](#) (CITAP). Under CITAP, transmission developers will have access to a centralized portal, operated by the DOE, which will allow them to file a single application, following a coordinated pre-application process, with the aim of reducing the time for federal permitting of transmission to two years. Thus, the DOE's role under CITAP will be similar to the role of the Federal Permit Improvement Steering Council, in that it will oversee and manage the federal permitting process for transmission projects. CITAP grows out of a 2023 [Memorandum of Understanding](#) among nine federal agencies that implements Section 216p(h) of the Federal Power Act (added in the Energy Policy Act of 2005), in which Congress authorized DOE to be the lead federal agency for the authorization and environmental review of transmission projects and set specific deadlines for those processes.

Finally, on May 13, 2024, FERC issued [Order No. 1977](#), which implements its “backstop authority” for transmission siting in NIETCs.

## **B. FERC and Regulation of Wholesale Electricity Sales**

Under the FPA, FERC regulates the rates for wholesale sales of electric power. After Order No. 888 ushered in the era of open transmission access and market competition in the wholesale electricity markets, FERC authorized the creation of Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”), which control operation

of the electric grid and wholesale markets in much of the country. To date, no RTO or ISO operates in the Pacific Northwest, although the strong market and transmission linkages between California and the Northwest mean that the California Independent System Operator (“CAISO”), which operates the grid and wholesale markets in California, has an important influence on the Pacific Northwest’s electricity system.

In addition, the region’s utilities have been moving toward voluntary formation of a regional market that would permit utilities to trade power in the short-term markets, thus improving the region’s ability to integrate variable renewable resources like wind and solar. These markets could substantially increase renewables penetration in the region and reduce the costs of balancing resources, but require robust transmission connections to realize their full value.

### **C. Federal Hydroelectric Licensing**

Under Part I of the Federal Power Act,<sup>172</sup> anyone proposing to construct a hydroelectric dam in the United States is required to obtain a permit from FERC.<sup>173</sup> Licensing is intended to ensure that construction of hydroelectric dams does not unduly interfere with river navigation, that hydro development occurs in a manner that efficiently uses hydroelectric resources, and that dams do not unduly harm the environment or other protected resources. Before a license can be issued, FERC requires the licensee to demonstrate that it has obtained all federal, state, and local permits necessary to allow construction of the dam. Licenses are generally issued for a term of 50 years.<sup>174</sup>

Beginning in the 1980s, as the initial licenses for a large number of dams that were licensed shortly after enactment of Part I in the 1930s, FERC struggled to effectively relicense dams using

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<sup>172</sup> 16 U.S.C. § 791 *et seq.*

<sup>173</sup> FERC’s jurisdiction includes any dam on navigable waters and any dam producing power that moves in interstate commerce, so it covers essentially every dam other than small dams that are not connected to the grid.

<sup>174</sup> See FERC [Hydroelectric Licensing](#) page.



the traditional process, where an application is filed, interested parties then intervene, and a lengthy process of fact discovery and analysis follows. FERC struggled to integrate environmental laws, particularly NEPA and the Clean Water Act, which were enacted decades after the Federal Power Act, into the licensing process. FERC was dissatisfied with this process because it was often extremely time-consuming and also in too many cases resulted in licenses being overturned in litigation, often based on concerns that were not identified until late in the licensing process.

In response, FERC first in 1997 adopted an Integrated Licensing Process, that emphasized a pre-application process in which the applicant for a license meets with FERC staff and other regulators prior to filing the license application, which was intended to identify problems in advance and ensure that those problems did not derail the application. The process again proved unsatisfactory, and FERC in 2003 therefore instituted a new Alternative Licensing Process, which enhances the requirements for pre-application consultations and technical assistance to potential licensees.<sup>175</sup>

These events offer lessons for Washington as it struggles to improve its permitting processes. Over time, FERC has relied increasingly on more robust pre-application processes to flesh out concerns and conflicts in order that an applicant can, before filing, revise its proposal or add mitigation measures that will make the application process flow more smoothly.

#### **D. State Utility Regulation**

Washington's landscape for retail electricity regulation is complicated by the mix of state-regulated and locally-governed entities that provide electricity to retail customers, as well as the significant role that BPA plays in generation and transmission of wholesale electricity. About half of Washington's residents are served by investor-owned utilities ("IOUs" – Puget

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<sup>175</sup> For background and history, see Order No. 2002, [Hydroelectric Licensing under the Federal Power Act](#), 104 FERC ¶ 61,109 (2003).

Sound Energy, PacifiCorp, Avista). The other half are served by publicly-owned utilities, primarily Public Utility Districts (“PUDs”) and municipally-owned utilities like Seattle City Light and Tacoma Power. Finally, rural electric cooperatives served large areas of rural Washington, although a relatively small proportion of the state’s population.

Washington’s primary utility regulator is the Washington Utilities and Transportation Commission (“UTC”). Although many other states have moved toward “retail access” – that is, permitting consumers to choose their electricity supplier, with local utilities used only to deliver that electricity – Washington continues to follow the traditional model of vertically-integrated, regulated utility monopolies. That is, Washington’s IOUs are required to serve all retail consumers within their service territories using electricity procured by the utility. In return, the UTC allows the utilities a return on the investment needed to serve those customers. The amount of the utilities’ investment is referred to as their “rate base,” and reflects all investments in infrastructure, plus costs of personnel and equipment, made by the utilities to serve those retail customers.

The result of this traditional monopoly structure is that independent generators – non-utility generators that compete in the wholesale electricity market – have no direct access to Washington buyers. Instead, non-utility generators and customers who wish to purchase renewable power rather than power from the IOUs (which continue to rely substantially on fossil fuel generation) have only limited options. For example, customers may choose to obtain power through “green tariffs.” When a retail customer signs up for a green tariff program, the utility agrees to obtain sufficient renewable power to meet the needs of the customers who have entered the program, but the utility continues to be the customer’s sole power provider. In addition, the

UTC has required regulated utilities to use competitive solicitation processes to obtain new power supplies.

There is one important exception to Washington’s general rule that independent generators lack access to retail markets, the Public Utility Regulatory Policies Act of 1978 (“PURPA”). PURPA requires utilities to purchase the electric output from renewable energy generators with 80 MW of capacity or less and from cogeneration facilities (“Qualifying Facilities” in PURPA parlance) as the utility’s “avoided cost” rate. Avoided cost has been understood to mean the cost the utility would incur to purchase or generate electricity in the absence of the supply from the QF. In some states, PURPA has been used successfully to encourage renewable energy generation by providing a meaningful right of access to retail markets. However, PURPA delegates considerable authority to the states to administer and enforce the statute, and Washington PURPA program has produced very little renewable energy construction, particularly when compared to neighboring states like Oregon and Idaho.

The UTC does not regulate Washington’s publicly-owned utilities. Instead, the rates and terms of retail service for these utilities are established by elected representations. In the case of PUDs, these are elected Commissioners. For municipally-owned utilities, elected city council members ultimately control retail rates and terms of service. The COUs, like the IOUs, must comply with carbon reduction requirements. In addition, in recent years, the Legislature has provided explicit authority to the COUs to, for example, mitigate their greenhouse gas emissions<sup>176</sup> and to support electrification of the transportation system.<sup>177</sup>

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<sup>176</sup> RCW 54.16.390.

<sup>177</sup> RCW 54.16.430.

Washington has for many years required larger utilities to develop and publish Integrated Resource Plans (“IRP”).<sup>178</sup> The IRP process has proved to be a useful way for utilities to systematically analyze their needs for power and transmission and anticipated load growth, and to analyze the available alternatives to meet those loads. When it adopted CETA, the Legislature piggy-backed on the success of the IRP process, requiring utilities to adopt Clean Energy Implementation Plans to plan for decarbonization of their systems, and to provide periodic reports on progress toward decarbonization goals. Most recently, in legislation aimed at allowing combination gas-electric utilities such as Puget Sound Energy to decarbonize their natural gas distribution systems, the Legislature directed that those utilities combine natural gas and electric system planning in order to plan for conversion of many gas appliances and other applications to electricity.<sup>179</sup>

#### **E. Regulation of Natural Gas**

FERC regulates natural gas under the Natural Gas Act (“NGA”), which uses the same statutory model as the Federal Power Act. FERC regulates interstate gas transmission lines and the wholesale market for natural gas moved in interstate commerce, while retail sales and regulation of local distribution systems are left to the states. One major difference between the NGA and the FPA, however, is that an entity seeking to construct in interstate gas pipeline must obtain a certificate of public convenience and necessity (“CPCN”) from FERC. This requires the pipeline proponent to demonstrate that the pipeline is needed and otherwise would be in the public interest, but if FERC approves the CPCN, this gives the pipeline eminent domain

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<sup>178</sup> RCW Chap. 19,280.

<sup>179</sup> [HB 1859](#) (signed by Gov. Inslee on March 28, 2024).

authority. The result is that construction of interstate natural gas pipelines is significantly easier from a legal perspective than construction of interstate electric transmission lines.

In recent years, many states, including Washington, have recognized that renewable natural gas (“RNG,” that is, methane derived from sources like livestock operations, landfills, and sewage treatment plants) and have taken measures to encourage the use of RNG, including, for example, establishing programs by which retail consumers can elect to be served with RNG, providing that RNG pipelines can be placed on the rights of way for public roads, and providing tax incentives and other measures to encourage the construction of dairy digesters and similar facilities to capture RNG.

## APPENDIX D

### NATIVE AMERICAN TRIBES IN WASHINGTON AND TREATY RIGHTS

Twenty-nine federally-recognized Indian Tribes call Washington home.<sup>180</sup> In addition, certain Tribes in other states, including, for example, the Nez Perce, Umatilla, Grande Ronde, and the Confederated Tribes of the Warm Springs Reservation, have interests in Washington, so the total number of Tribes participating in permitting processes in Washington is approximately 36. The Tribes are independent sovereigns under both federal and state law, and development of renewable energy and other resources to support decarbonization of Washington’s economy must therefore respect Tribal rights. Tribal rights are governed by the Stevens Treaties, a series of treaties negotiated by Territorial Governor Isaac Stevens in the 1850s.<sup>181</sup> The Stevens Treaties reserve land to the Tribes. Currently, Indian Reservations occupy about six million acres of Washington land, much of it with excellent renewable energy resources. In addition, the Stevens Treaties permits tribal members to hunt and fish in their “usual and accustomed places.” Accordingly, Washington’s Tribes have rights that extend well beyond the boundaries of their reservations.

As further detailed in the Low-Carbon Siting Report,<sup>182</sup> the State of Washington has formalized tribal consultation requirements in several specific ways:

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<sup>180</sup> This number does not include tribes that have not received federal recognition. Unrecognized tribes include, most notably, the Duwamish Tribe, whose ancestral lands underlie the City of Seattle. *See generally* David M. Buerge, *Chief Seattle and the Town That Took His Name: The Change of Worlds for Native People and Settlers on Puget Sound* (2017).

<sup>181</sup> *See* Charles Wilkinson, *Treaty Justice: The Northwest Tribes, the Boldt Decision and the Recognition of Fishing Rights* (Univ. of Washington Press 2024); WDFW, *Treaty history with the Northwest Tribes* (available at: [https://wdfw.wa.gov/hunting/management/tribal/history#:~:text=Stevens%20ultimately%20negotiated%20eight%20treaties,lands%20beyond%20these%20reserved%20areas](https://wdfw.wa.gov/hunting/management/tribal/history#:~:text=Stevens%20ultimately%20negotiated%20eight%20treaties,lands%20beyond%20these%20reserved%20areas).)).

<sup>182</sup> Low-Carbon Siting Report at 38-40.

- *Centennial Accord*: The Centennial Accord<sup>183</sup> provides a framework for government-to-government relations between the state and Tribes.
- *RCW Chapter 43.376*: Chapter 43.376 requires state agencies to make reasonable efforts to collaborate with Tribes when developing policies and programs that directly affect Tribes.
- *Executive Order 21-02*: This executive order directs state agencies to consult with affected Tribes and the Department of Archaeological and Historic Preservation if state-funded construction or acquisition projects will not otherwise undergo review under Section 106 of the NHPA.
- *Statutory Commitments*: The Climate Commitment Act<sup>184</sup> and the HEAL Act<sup>185</sup> both contain requirements for Tribal consultation.
- *EFSEC*: HB 1812 requires EFSEC to consult with Tribes with rights or resources in the area of a proposed project.
- *SB 1717*: In 2022, the Legislature adopted and Governor Inslee signed SB 1717,<sup>186</sup> which amends the Growth Management Act by permitting federally recognized Tribes to opt into county or regional planning processes if their reservations lie within the county or region. If the tribe elects to participate and has its own planning process, the relevant county must enter into a memorandum setting forth the terms to coordinate the county's planning process with the Tribe's.

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<sup>183</sup> Available at <https://goia.wa.gov/relations/centennial-accord>.

<sup>184</sup> RCW 70A.65.305.

<sup>185</sup> RCW 70A.02.100.

<sup>186</sup> Wash. Laws of 2022, Ch. 252,

While we generally recommend providing information up front to project developers so that they can avoid sensitive lands and identify development sites with minimal environmental impacts, it is important to recognize that some Tribal resources, particularly sacred sites, archaeological sites, burial grounds, and sites with historical significance such as traditional village sites, should not be publicly disclosed without the explicit approval of the affected Tribe. Protection of this kind of information is necessary because of the unfortunate history of looting of Native American artifacts by “pot hunters” seeking to profit from the lucrative black market in such artifacts.<sup>187</sup> Measures such as the federal Archaeological Resources Protection Act<sup>188</sup> have proven inadequate to fully protect Tribal resources and artifacts from this kind of black market profiteering. Accordingly, the disclosure requirements we recommend should be applied to Tribes only with great care and in close consultation with the Tribes.

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<sup>187</sup> See, e.g., K. Sharp, “An Exclusive Look at the Greatest Haul of Native American Artifacts, Ever,” *Smithsonian Magazine*, Nov. 2015 (available at: <https://www.smithsonianmag.com/history/exclusive-greatest-haul-native-american-artifacts-looted-180956959/>).

<sup>188</sup> See, e.g., U.S. Forest Service, Archaeological Resources Protection (<https://www.fs.usda.gov/lei/archeological-resources-protection.php#:~:text=The%20Archaeological%20Resources%20Protection%20Act,archaeological%20collections%20from%20those%20sites.>).



## APPENDIX E

### GOVERNMENT OWNED LANDS

More than 12 million acres of land in Washington, more than 28% of the state’s total land area, is owned by the federal government. Another 6.5 million acres is owned by the State of Washington.<sup>189</sup> Often, these government-owned lands are in areas of the state with high-quality solar, wind, or other renewable resources. Both state and federal agencies are now taking significant actions to promote the development of renewable energy resources. Further, significant electric transmission lines in Washington will almost invariably require access to government-owned lands. Accordingly, development of green energy and infrastructure in Washington is intimately tied to these lands and the agencies that administer them. This section briefly describes the various classifications of land, how those lands are administered, and how different agencies are attempting to promote the development of renewable energy. Efforts to promote electric transmission are discussed in the section below, where we discuss federal energy regulation and regulation of transmission.

### FEDERAL LANDS

Federal lands are governed by several different legal regimes that are administered by a variety of agencies.<sup>190</sup> Federal lands in Washington are governed as follows:

- *Federally-Designated Wilderness*: Washington boasts thirty-one federally-designated wilderness areas located in all parts of the state, which together cover about 4.3 million

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<sup>189</sup> The University of Washington’s Spatial Informatics Group has inventoried Washington’s public lands and provides extensive information concerning, for example, the forest and wetlands resources on those lands and a variety of databases related to climate change. See <https://nrsig.org/>

<sup>190</sup> The Congressional Research Service publishes a useful high-level summary of various federal land designations and the legal basis for those designations entitled “Federal Land Designations: A Brief Guide.” The most recent version, updated on May 19, 2023, is available at: [R45340 \(1\).pdf](#).

acres. Under the Wilderness Act,<sup>191</sup> these lands are preserved in their wild state and therefore are off limits to development.

- *National Parks*: Three major National Parks are located in Washington: Olympic, Mt. Rainier, and North Cascades.<sup>192</sup> Together these parks occupy about 1.7 million acres. National Parks are administered to maximize their value as natural and recreational resources.<sup>193</sup> Accordingly, while it is possible to construct certain facilities in National Parks, such as roads, campgrounds, and buildings, these facilities are generally aimed at serving National Park visitors. For purposes of this study, we assume that National Parks are effectively off limits to energy or green economy projects other than small projects serving Park infrastructure, such as solar panels on Park Service buildings.
- *National Forests*. Eight National Forests are located entirely or mostly in Washington. National Forests are administered by the U.S. Forest Service, which is part of the U.S. Department of Agriculture. National Forests are administered under several different statutes,<sup>194</sup> but as a general matter the Forest Service manages for multiple uses and a sustained yield of forest products. Accordingly, it is possible to construct electric transmission, renewable generation, and other types of projects on National Forest lands, but any construction must be permitted by the Forest Service and is subject to legal restrictions arising from the statutes governing the national forests as well as Forest Plans that are developed periodically by each forest.

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<sup>191</sup> 16 U.S.C. § 1131 *et seq.*

<sup>192</sup> The National Park Service administers a number of much smaller sites, such as the Whitman Mission National Historical Park in the southeast corner of the state and Ebey's Landing National Historic Reservation on Whidbey Island. These reservations are generally small and therefore unlikely to be a significant barrier to the development of green economy resources.

<sup>193</sup> 54 U.S.C. § 100101 *et seq.*

<sup>194</sup> *E.g.*, National Forest Management Act, 16 U.S.C. § 1600 *et. seq.*; Multiple Use-Sustained Yield Act, 16 U.S.C. § 528.

In the Pacific Northwest, significant restrictions on development in forests may arise from, for example, the Northwest Forest Plan, which is aimed at preserving the habitat of two endangered species, the northern spotted owl and the marbled murrelet.<sup>195</sup> In addition, the Forest Service administers a variety of lands that have been designated, either by Congress or by the agency itself, with special protections. For example, the Forest Service administers the Mount Saint Helens National Volcanic Monument under an act of Congress.<sup>196</sup> Forest Managers can also designate areas for special management if they have significant scenic, recreational, historical, archaeological, paleontological, or biological resources.

- *BLM Lands:* The U.S. Bureau of Land Management (“BLM”), an agency within the U.S. Department of Interior, manages about 16 million acres in Washington and Oregon. In Washington, BLM administers lands that are scattered across much of Eastern Washington. On January 17, 2024, the BLM announced that it is updating its “solar road map,” which originally included only states in the southwest, to include Washington and four other northern states.<sup>197</sup> The road map will guide solar development on BLM lands in Washington and includes a Programmatic Environmental Impact Statement that broadly assesses the impacts of solar development on BLM lands.<sup>198</sup>
- *Department of Defense Lands:* Several major defense installations are located in Washington. These include, for example, Joint Base Lewis-McChord, Whidbey Naval Air Station, and the Yakima Firing Range. The primary purposes of these military reservations is, of course, national defense. Accordingly, while development of green

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<sup>195</sup> See <https://www.fs.usda.gov/r6/reo/monitoring/northern-spotted-owl.php>.

<sup>196</sup> 96 Stat. 301 (1982).

<sup>197</sup> See <https://www.blm.gov/press-release/blm-analysis-aims-optimize-solar-energy-development-throughout-west>.

<sup>198</sup> See <https://blmsolar.anl.gov/solar-peis-2023/>.

energy and green economy infrastructure is not off limits on these lands *per se*, any development must be compatible with the military mission of these facilities. The military impact on renewable energy development reaches beyond the boundaries of military reservations in one important way: wind generators may create barriers to low-level flight training missions and create interference with military radar system. Hence, wind energy developers must ensure that their developments do not interfere with military aviation facilities or missions.

- *National Wildlife Refuges:* Washington boasts twenty-four National Wildlife Refuges, including several large refuges like the Columbia Wildlife Refuge, at 30,000 acres, and Turnbull National Wildlife Refuge, at 23,000 acres, which are administered by the U.S. Fish & Wildlife Service, an agency of the Department of Interior. Areas protected as wildlife refuge are small compared to the acreage of other protected federal lands. However, these lands are generally located in areas of critical wildlife habitat, such as key stopovers for migratory birds. Hence, renewable energy developers must be cognizant of these refuges and recognize that development of, for example, wind energy near a refuge might present an unusually large risk to migrating birds because a disproportionately large number of birds may migrate through the refuge.
- *Federal Offshore Lands:* Washington owns all submerged lands lying within three miles of its coastline. Lands on the continental shelf beyond the three-mile limit, referred to as the Outer Continental Shelf (“OCS”), are owned by the federal government and administered under the Outer Continental Shelf Lands Act.<sup>199</sup> Mineral and energy development on the OCS is administered by the Bureau of Ocean Energy and Mining

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<sup>199</sup> 43 U.S.C. §§ 1331 *et seq.*

(“BOEM”). BOEM’s jurisdiction extends to leasing the OCS for wind energy development.

Offshore wind technology has, until the last few years, been confined to shallow waters off the coast of Europe and the U.S. East Coast. However, technology that allows development in deeper waters like those off the West Coast has advanced rapidly and BOEM is now moving to lease areas off the coasts of California and Oregon for wind energy development. While BOEM has not yet moved to lease areas off Washington, it is likely that BOEM will turn its attention to Washington waters in the next few years.

Offshore wind energy is generally more expensive to develop than onshore wind, but winds offshore are more steady and reliable than onshore winds, and developers therefore generally view the extra expense associated with developing offshore wind facilities to be justified by the ability to capture a resource with greater value. Far-sighted legislators should be paying careful attention to offshore wind energy to ensure that adequate transmission pathways are available to move energy from offshore wind to load centers on land, that wind developers can lease state lands in the three-mile exclusive economic zone to move power from offshore wind installations to the onshore transmission system, and that the state has identified sensitive fisheries and other marine resources that should be protected as wind energy is developed.

### **STATE LANDS**

Most land owned by the State of Washington, about 5.6 million acres, is administered by the Washington Department of Natural Resources (“DNR”). DNR administers most of the submerged lands owned by the State of Washington, and

therefore will be a key player if the development of Washington's offshore wind energy resources for the reasons described above.

DNR also administers Washington's trust lands, which constitute the bulk of its holdings. These school trust lands were ceded by the federal government to Washington at statehood with the intent that resources from these lands would be used to support Washington's public schools and other purposes like the state capitol.<sup>200</sup> To further this mission, DNR has begun actively promoting renewable energy development on state and has set a goal of 500 MW of solar development on DNR lands by 2025. To achieve this goal, DNR has, for example, producing a map of clean energy resources on state lands that identified areas with the least risk for conflicts over environmental values. DNR currently leases 1,300 acres of state lands for solar projects.<sup>201</sup> DNR has also begun to explore leasing state forest lands as a means of carbon sequestration to fight climate change.<sup>202</sup>

Most other state lands are administered by the Washington Department of Fish and Wildlife, which administers approximately one million acres of state lands or by Washington State Parks, which administers 140 properties across the state, although these cover only about 123,000 acres in total. In both cases, the primary mission of these agencies is to conserve the lands they administer, and to promote recreation and wildlife. Green energy development is not barred on these lands per se, but any development would have to be approved by the agency and reconciled with the restrictions on development for the lands administered by these agencies.

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<sup>200</sup> See, e.g., *Conservation Northwest v. Comm'r of Pub. Lands*, 199 Wn.2d 813, 822, 514 P.3d 174, 179 (2022).

<sup>201</sup> See <https://www.dnr.wa.gov/cleanenergymap>.

<sup>202</sup> See <https://www.dnr.wa.gov/CarbonProject> (forest sequestration); <https://www.dnr.wa.gov/geologic-carbon-sequestration> (geological sequestration).

## APPENDIX F

### WA Clean Energy Permitting Reform

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## **APPENDIX G**

### **Organizations Interviewed**

The Audubon Society  
Avangrid  
ClearPath Energy  
Enel Green Power North America  
esVolta  
White House Permitting Improvement Steering Council  
NewSun Energy  
Northwest & Intermountain Independent Power Producers Association  
Puget Sound Energy  
Stoel Rives law firm  
SWCA Environmental Consultants  
Tetra Tech  
The Nature Conservancy  
State of Washington Energy Facility Site Evaluation Council

## APPENDIX H

### RECENT LEGISLATION OF NOTE

#### 1. **HB 2039: Consolidated and Expedited Appeals**

On March 28, 2024, Gov. Inslee signed [HB 2039](#), which simplifies and expedites the process of appeals for clean energy permitting matters. HB 2039 provides that permitting decisions involving a clean energy project, as defined in HB 1216, can be certified for appeal directly to the Washington Courts of Appeals. In addition, where a clean energy project requires multiple permits, appeals of the permits can be consolidated into a single appeal. HB 2039 is a welcome development that helps reduce delays and legal conflicts where permits for a clean energy project are appealed.

#### 2. **SB 5165: Transmission Siting**

In 2023, the Legislature passed [SB 5165](#) to address concerns about transmission planning and siting in Washington. SB 5165 builds on the Transmission Corridors Work Group, which was created by Clean Energy Transformation Act and which resulted in the publication of a report setting forth recommendations for planning, permitting and siting electric transmission facilities which serves as the basis for some of the recommendations made in this report.<sup>203</sup>

SB 5165 includes the following major provisions:

- Adds transmission planning, including planning around advanced technology and non-wires solutions, to Washington's requirements for large utilities to produce periodic Integrated Resource Plans.

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<sup>203</sup> [Final Report, Transmission Corridors Work Group \(August 1, 2022\).](#)

- Adds large transmission facilities (greater than 500 kV AC/300 kV DC, crossing two or more counties and two or more utility service territories) to the list of facilities required to use the EFSEC process.
- Directs EFSEC to participate in the National Interest Electric Transmission Corridors process and to coordinate NEPA reviews with federal agencies undertaking reviews of interstate transmission projects.
- Directs EFSEC to undertake a non-project environmental review for transmission facilities with a capacity of 230 kV or more, which should identify environmental impacts and mitigation measures common to such facilities.

### **3. Transportation Rights of Way: HB 2134 § 214**

As part of the [supplemental transportation budget](#) signed by Gov. Inslee on March 28, 2024 the Legislature (in Section 214((7)(a)(i) & (iv)) directed the Department of Transportation to review and recommend updates to its policy concerning use of state highway rights of way to accommodate clean energy and connectivity projects, which at a minimum must include renewable energy and electric transmission and distribution lines. We support this approach and suggest that rights of way should be open to all types of linear facilities that support decarbonization, including, for example, pipelines for renewable natural gas, carbon dioxide for sequestration projects, and green electrolytic hydrogen.

### **4. Geothermal Energy: SB 6039**

Signed on March 28, 2024, SB 6039 aims to promote geothermal energy in Washington by updating lease rates for geothermal development on state lands, by creating a cost-share program to support exploration for geothermal resources in Washington, and by directing

Washington agencies to engage in a collaborative process to identify locations with the greatest opportunities and risks for geothermal development.

**5. Carbon Market Linkage: SB 6058**

Also signed on March 28, SB 6058 makes a number of relatively minor corrections and clarifications to the Climate Commitment Act to facilitate linkage of Washington's carbon market with existing markets in California and Quebec.

**6. Decarbonization of Combined Natural Gas/Electric Utilities: SB 1589**

Another bill signed by Gov. Inslee at the end of the Legislature's most recent session, SB 1589 adopts a number of measures aimed at facilitating the decarbonization of the natural gas functions of combined natural gas/electric utilities (primarily Puget Sound Energy) through electrification and other processes.