7.0 Consultations, Laws, and Requirements

This chapter summarizes the major laws, regulations, Executive Orders, and U.S. Department of Energy (DOE) regulations, orders, and agreements that might apply to Hanford Site land uses. The Federal, Tribal, state, and local agencies that were consulted by DOE during the preparation of the HRA-EIS are also identified.

7.1 Federal Laws

Relevant laws of the United States that might apply to the implementation of the land-use alternatives at the Hanford Site are discussed in the sections that follow.

7.1.1 Treaties of the United States with American Indian Tribes of the Hanford Region

In May and June of 1855, at Wai-i-lat-pu (near present-day Walla Walla, Washington), leaders of various Columbia Plateau American Indian Tribes and Bands negotiated treaties with representatives of the United States. The negotiations resulted in 3 treaties, one with the 14 Tribes and bands of what would become the Confederated Tribes and Bands of the Yakama Nation, one with the 3 Tribes that would become the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and one with the Nez Perce Tribe. The treaties were ratified by the U.S. Senate in 1859. The negotiated treaties are as follows:

- *Treaty with the Walla Walla, Cayuse, etc.* (June 9, 1855; 12 Stat. 945)
- *Treaty with the Yakama* (June 9, 1855; 12 Stat. 951)
- *Treaty with the Nez Perce* (June 11, 1855; 12 Stat. 957).

The terms of all three treaties are essentially the same. Each of the three Tribal organizations agreed to cede large blocks of land to the United States. The Tribes retained certain lands for their exclusive use (the three reservations) and also retained the rights to continue traditional activities outside the reservations. These reserved rights include the right to fish (and erect fish-curing facilities) at usual and accustomed places. These rights also include rights to hunt, gather foods and medicines, and pasture livestock on open and unclaimed lands.

The act of treaty-making between the United States and an Indian Tribe has many legal consequences for both entities. The United States recognizes the existence of the Tribe as a sovereign and initiates a government-to-government relationship with the Tribe. At the same time, the Tribe loses some aspects of its sovereignty, such as the right to negotiate (independently of the United States) with other foreign powers. In return, the United States and the Tribe enter into a trust relationship, whereby the United States assumes the responsibility to preserve the rights and resources of the Tribe from incursions by private entities, states, or the Federal government itself. One aspect of this trust duty is the need to consult with the Tribes concerning decisions made by the Federal government that could affect Tribal rights or resources. In addition to these general legal consequences of treaty-making, the individual treaty itself defines particular new roles and responsibilities of the two governments, within the terms of the new legal relationship created by the treaty.

Every Federal agency that makes decisions potentially affecting the rights or resources of federally recognized American Indian Tribes shares in the trust responsibility duties of the Federal government. This trust responsibility includes the duty to consult with those Tribes concerning the potential impacts of agency decisions. As a result, DOE regularly consults with the CTUIR, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe

concerning decisions being made by DOE on the Hanford Site that might affect Tribal rights or resources. Land-use planning decisions are within the realm of such decisions. DOE invited all affected Tribes to participate in the drafting of the HRA-EIS. The U.S. Department of Energy, Richland Operations Office (RL) will continue to consult with these Tribes during the further development and implementation of this environmental impact statement (EIS). Copies of the Treaties are presented in Appendix A.

7.1.2 International Treaties of the United States

7.1.2.1 Migratory Bird Treaty Act of 1918. The *Migratory Bird Treaty Act of 1918*, as amended, is intended to protect birds that have common migration patterns between the United States and Canada, Mexico, Japan, and Russia. The law regulates the harvest of migratory birds by specifying factors such as the mode of harvest, hunting seasons, and bag limits. This Act stipulates that, except as permitted by regulations, it is unlawful at any time, by any means, or in any manner to "kill . . . any migratory bird." The DOE is required to consult with the U.S. Fish and Wildlife Service (USFWS) regarding impacts to migratory birds and to evaluate ways to avoid or minimize impacts in accordance with the USFWS migration policy.

7.1.2.2 Pacific Salmon Treaty Act of 1985. The *Pacific Salmon Treaty Act of 1985* ratified a treaty between the United States and Canada concerning Pacific salmon. The law is intended to protect and maintain Pacific salmon fisheries by regulating the fishing season. The law establishes panels with jurisdiction over certain areas. Associated regulations close the panel area to sockeye and pink salmon fishing unless opened by panel regulations or by in season orders of the Secretary of Commerce that give the effect to panel orders.

7.1.3 Federal Natural Resource Management, Pollution Control, and Cultural Resource Laws

7.1.3.1 National Environmental Policy Act of 1969. The *National Environmental Policy Act of 1969* (NEPA), as amended, establishes a national policy that encourages awareness of the environmental consequences of human activities and promotes consideration of those environmental consequences during the planning and implementing stages of a project. Under NEPA, Federal agencies are required to prepare detailed statements to address the environmental effects of proposed major Federal actions that might significantly affect the quality of the human environment. The HRA-EIS has been prepared in accordance with NEPA requirements and policies, and presents reasonable alternatives and the potential environmental consequences of those alternatives.

7.1.3.2 Clean Air Act of 1970. The *Clean Air Act of 1970* (CAA), as amended, is intended to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Section 118 of the CAA requires each Federal agency, with jurisdiction over properties or facilities engaged in any activity that might result in the discharge of air pollutants, to comply with all Federal, state, interstate, and local requirements with regard to the control and abatement of air pollution.

Under Section 109 of the CAA, the U.S. Environmental Protection Agency (EPA) is required to establish national ambient air quality standards (NAAQS) that protect public health from known or anticipated adverse effects of a regulated pollutant. Section 111 of the CAA requires establishment of national performance standards for new or modified stationary sources of atmospheric pollutants. Specific emission increases must be evaluated in order to prevent significant deterioration of air quality. Hazardous air pollutants, including radionuclides, are regulated separately. Emissions of air pollutants are regulated by the EPA in 40 CFR 50-99. Radionuclide emissions and hazardous air pollutants are regulated under the National Emissions Standards for Hazardous Air Pollutants Program (40 CFR 61 and 40 CFR 63).

7.1.3.3 Safe Drinking Water Act of 1974. The primary objective of the *Safe Drinking Water Act of 1974* (SDWA), as amended, is to protect the quality of the public water supply and sources of drinking water. In the State of Washington, the EPA has the authority to implement regulations to establish standards applicable to public water systems. These regulations further establish the maximum contaminant levels, including maximum levels of radioactivity, that are allowed in public drinking water systems. The EPA has promulgated the SDWA requirements in 40 CFR 140-149. Current regulations (40 CFR 141) specify that the average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 mrem/yr. Revisions to the limits regulating radionuclides have been proposed by the EPA.

Other programs established by the SDWA include the Sole Source Aquifer Program, the Wellhead Protection Program, and the Underground Injection Control Program.

7.1.3.4 Clean Water Act of 1977. The *Clean Water Act of 1977* (CWA), as amended, was enacted to "restore and maintain the chemical, physical and biological integrity of the Nation's water." The CWA prohibits "discharge of toxic pollutants in toxic amounts" to navigable waters of the United States. Section 313 of the CWA requires all branches of the Federal government with jurisdiction over properties or facilities engaged in any activity that might result in a discharge or runoff of pollutants to surface waters, to comply with Federal, state, interstate, and local requirements.

In addition to setting water quality standards for waterways, the CWA provides guidelines and limitations for effluent discharges from point sources and gives authority for the EPA to implement the National Pollutant Discharge Elimination System (NPDES) Permitting Program. The NPDES Program is administered by the Water Management Division of the EPA (40 CFR 122).

In 1987, the CWA was amended and EPA was required to establish regulations for issuing permits for stormwater discharges associated with industrial activity. Stormwater discharges are permitted through the NPDES Program, and general permit requirements are published in 40 CFR 122.

7.1.3.5 Resource Conservation and Recovery Act of 1976. Treatment, storage, and/or disposal of hazardous and nonhazardous waste is regulated under the *Solid Waste Disposal Act of 1965,* which was amended by the *Resource Conservation and Recovery Act of 1976* (RCRA), and the *Hazardous and Solid Waste Amendments of 1984*. Any state that seeks to administer and enforce a hazardous waste program pursuant to RCRA may apply for EPA authorization of the state program. The Washington State Department of Ecology (Ecology) has been delegated the authority for implementing the Federal RCRA program in the State of Washington. The EPA regulations implementing RCRA define hazardous wastes and specify the transportation, handling, and waste management requirements of these wastes (40 CFR 260-280).

The *Federal Facilities Compliance Act of 1992* (FFCA) amends RCRA and waives sovereign immunity for fines and penalties for RCRA violations at Federal facilities. A provision of the FFCA postpones fines and penalties for three years for mixed waste storage prohibition violations at DOE sites and requires DOE to prepare plans for developing the required treatment capacity for mixed waste stored or generated at each facility. Each plan must be approved by the host state or the EPA, after consultation with other affected states, and a consent order requiring compliance with the plan must be issued by the regulator. The FFCA also states that DOE will not be subject to fines and penalties for land disposal restriction storage prohibition violations for mixed waste as long as DOE is in compliance with an approved plan and consent order and meets all other applicable regulations.

7.1.3.6 Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The *Comprehensive Environmental Response, Compensation, and Liability Act of 1980* (CERCLA) provides a statutory framework for the remediation of waste sites containing hazardous substances and, as amended by the *Superfund Amendments and Reauthorization Act of 1986* (SARA), an emergency response program in the event a release (or threat of a release) of a hazardous substance to the environment occurs. Using a hazard ranking system, Federal and private contaminated sites are ranked and may be included on the National Priorities List. CERCLA requires Federal facilities with contaminated sites to undertake investigations, remediation, and natural resource restoration, as necessary.

7.1.3.7 Emergency Planning and Community Right-to-Know Act of 1986. Under Subtitle A of the *Emergency Planning and Community Right-to-Know Act of 1986*, also known as the *Superfund Amendments and Reauthorization Act of 1986* (SARA Title III), Federal facilities are required to provide information regarding the inventories of chemicals used or stored at a site and releases from that site to the State Emergency Response Commission and the Local Emergency Planning Committee. This requirement ensures that emergency plans are sufficient to respond to unplanned releases of hazardous substances. Implementation of provisions in the *Emergency Planning and Community Right-to-Know Act of 1986* began voluntarily in 1987; inventory and emissions reporting began in 1988 based on 1987 activities and information. The requirements of the *Emergency Planning and Community Right-to-Know Act of 1986* are promulgated by the EPA in 40 CFR 350-372. The DOE requires compliance with SARA Title III.

7.1.3.8 Toxic Substances Control Act of 1976. The *Toxic Substances Control Act of 1976* (TSCA) provides the EPA with the authority to require testing of chemical substances (both new and old) entering the environment and, where necessary, to regulate those chemicals. The law complements and expands other toxic substance laws such as Section 112 of the CAA and Section 307 of the CWA. The TSCA was enacted because there were no Federal regulations requiring evaluation of potential environmental or health effects from the thousands of chemicals being developed and released to the public or commerce annually. The TSCA also regulates the treatment, storage, and disposal of certain toxic substances (e.g., polychlorinated biphenyls, chlorofluorocarbons, asbestos, dioxins, certain metal-working fluids, and hexavalent chromium).

7.1.3.9 Pollution Prevention Act of 1990. The *Pollution Prevention Act of 1990* establishes a national policy for waste management and pollution control. This Act focuses first on source reduction, followed sequentially by environmentally safe recycling and treatment and, as a last resort, disposal or other release into the environment. The DOE has committed to participation in Section 313 of SARA, the EPA 33/50 Pollution Prevention Program. The goal for facilities involved in Section 313 compliance is a 33 percent reduction in releases of 17 priority chemicals by 1997 (based on a 1993 baseline). On August 3, 1993, Executive Order 12856 was issued. This Executive Order expands the 33/50 Pollution Prevention Program and requires DOE to reduce total releases of all toxic chemicals by 50 percent by December 31, 1999. Each DOE site is, therefore, establishing site-specific goals to reduce generation of all waste types.

7.1.3.10 National Historic Preservation Act of 1966. The *National Historic Preservation Act of 1966*, as amended, requires nomination for placement of sites with significant national historic value on the National Register of Historic Places (NPS 1988). Permits and certifications are not required under this Act; however, consultation with the Advisory Council on Historic Preservation is required if a Federal undertaking might impact a historic property resource. This consultation generally results in a Memorandum of Agreement (MOA) that includes stipulations to minimize adverse impacts to the historic resource. Coordination with the State Historic Preservation Office is undertaken to ensure that potentially significant sites are properly identified and appropriate mitigation measures are implemented.

7.1.3.11 Archaeological Resources Protection Act of 1979. The *Archaeological Resources Protection Act of 1979*, as amended, requires a permit for any excavation or removal of

archaeological resources from Federal or Indian lands. Excavations must be undertaken for the purpose of furthering archaeological knowledge in the public interest, and resources removed are to remain the property of the United States. Consent must be obtained from the Indian Tribe or the Federal agency having authority over the land on which a resource is located before issuance of a permit; the permit must contain terms and conditions requested by the Tribe or Federal agency.

7.1.3.12 Native American Graves Protection and Repatriation Act of 1990. The *Native American Graves Protection and Repatriation Act of 1990* directs the Secretary of the Interior to guide Federal agencies in the repatriation of Federal archaeological collections and collections affiliated culturally to American Indian Tribes, which are currently held by museums receiving Federal funding. This Act established statutory provisions for the treatment of inadvertent discoveries of American Indians' remains and cultural objects. Specifically, when discoveries are made during ground disturbing activities, the following must take place: (1) activity in the area of the discovery must cease immediately, (2) reasonable efforts must be made to protect the items discovered, (3) notice of discovery must be given to the agency head (DOE) and the appropriate Tribes, and (4) a period of 30 days must be set aside following notification for negotiations regarding the appropriate disposition of these items.

7.1.3.13 American Indian Religious Freedom Act of 1978. The *American Indian Religious Freedom Act of 1978* reaffirms American Indians' religious freedom under the First Amendment and sets United States policy to protect and preserve the inherent and constitutional right of American Indian Tribes to believe, express, and exercise traditional religions. This Act also requires that Federal agencies avoid interfering with access to sacred locations and traditional resources that are integral to the practice of religion.

7.1.3.14 Endangered Species Act of 1973. The *Endangered Species Act of 1973*, as amended, is intended to prevent further decline of endangered and threatened species and to restore those species and their habitats. This Act is jointly administered by the Departments of Commerce and Interior. Section 7 of this Act requires agencies to consult with the USFWS or the National Marine Fisheries Service. This consultation determines whether endangered and threatened species or critical habitats are known to be in the vicinity of a proposed action, and whether an action will adversely affect listed species or designated critical habitats.

7.1.3.15 Bald and Golden Eagle Protection Act of 1972. The *Bald and Golden Eagle Protection Act of 1972*, as amended, makes it unlawful to take, pursue, molest, or disturb bald and golden eagles, their nests, or their eggs anywhere in the United States. A permit must be obtained from the U.S. Department of the Interior (DOI) to relocate a nest that interferes with resource development or recovery operations.

7.1.3.16 Wild and Scenic Rivers Act of 1968. The *Wild and Scenic Rivers Act of 1968*, as amended, protects selected national rivers possessing outstanding scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values. These rivers are to be preserved in a free-flowing condition to protect water quality and for other vital national conservation purposes. This Act also instituted a National Wild and Scenic Rivers system, designated the initial rivers within the system, and developed standards for the addition of new rivers in the future.

7.1.3.17 Nuclear Waste Policy Act of 1982. The *Nuclear Waste Policy Act of 1982*, as amended, authorizes Federal agencies to develop a geologic repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste. This Act specifies the process for selecting a repository site and constructing, operating, closing, and decommissioning the repository, and also establishes programmatic guidance for these activities.

7.1.3.18 Atomic Energy Act of 1954. The *Atomic Energy Act of 1954 (*AEA), as amended,

authorizes DOE to establish standards to protect health or minimize dangers to life or property with respect to activities under DOE jurisdiction. The DOE has used a series of departmental orders to establish an extensive system of standards and requirements to ensure safe operation of DOE facilities.

The AEA and related statutes give EPA the responsibility and authority for developing applicable environmental standards for protection of the general environment from radioactive materials. The EPA has promulgated several regulations under this authority.

7.1.3.19 Occupational Safety and Health Act of 1970. The *Occupational Safety and Health Act of 1970*, as amended, establishes standards to enhance safe and healthy working conditions in places of employment throughout the United States. The *Occupational Safety and Health Act of 1970* is administered and enforced by the Occupational Safety and Health Administration (OSHA), a U.S. Department of Labor agency. Although the OSHA and the EPA both have a mandate to limit exposures to toxic substances, the jurisdiction of the OSHA is limited to safety and health conditions in the workplace. In general, each employer is required to furnish a place of employment free of recognized hazards likely to cause death or serious physical harm to all employees. The OSHA regulations establish specific standards telling employers what must be done to achieve a safe and healthy working environment. Employees have a duty to comply with these standards and with all rules, regulations, and orders issued by OSHA.

The DOE places emphasis on compliance with OSHA regulations at DOE facilities. Through DOE orders, DOE prescribes that contractors shall meet OSHA standards applicable to work at government-owned, contractor-operated facilities. The DOE maintains and makes available the various records of minor illnesses, injuries, and work-related deaths, as required by OSHA regulations.

7.1.3.20 Comprehensive Conservation Study of the Hanford Reach of the Columbia River, Public Law 100-605. Public Law 100-605, passed by Congress on November 4, 1988, authorizes a comprehensive study of the Hanford Reach of the Columbia River to identify the outstanding features of the Hanford Reach and its immediate environment (including fish and wildlife, geologic, scenic, recreational, natural, historical, and cultural values), and to examine alternatives for their preservation. The Secretary of the Interior has affirmed the addition of the Hanford Reach to the National Wild and Scenic Rivers System and is waiting for Congressional action to implement the decision.

The Secretary of the Interior is charged with reviewing proposed actions within the study corridor to determine if there will be a direct and adverse effect on the values for which the Hanford Reach is under study and, if so, to provide recommendations for mitigation. In 1996, Public Law 104-333, *Omnibus Parks and Public Lands Management Act of 1996*, was enacted. Section 404 of this Act amended Public Law 100-605 to extend the Secretary's environmental review responsibility indefinitely and permanently prohibited any damming, dredging, or navigation project within the Hanford Reach.

7.1.3.21 Mining Law of 1872, as amended. *The Mining Law of 1872*, as amended, permits prospecting and mining on the unappropriated public domain for hardrock minerals (the Hanford Site is not considered unappropriated public domain). Congress declared that it is the continuing policy of the Federal government to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metals and mineral reclamation industries; (2) the economic development of domestic mineral resources, reserves, and reclamation of metals and minerals; (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the efficient use of natural and reclaimable resources; and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products and the reclamation of mined land, to lessen the adverse

impact of mineral extraction and processing on the physical environment.

7.1.3.22 Archeological and Historic Preservation Act of 1974. The *Archaeological and Historic Preservation Act of 1974*, as amended, protects sites that have historic and prehistoric importance.

7.1.3.23 Fish and Wildlife Conservation Act of 1980. The *Fish and Wildlife Conservation Act of 1980*, as amended, encourages all Federal entities (in cooperation with the public) to protect and conserve the nation's fish and wildlife.

7.1.3.24 Fish and Wildlife Coordination Act of 1934. *The Fish and Wildlife Coordination Act of 1934*, as amended, promotes more effectual planning and cooperation between Federal, state, public, and private agencies for the conservation and rehabilitation of the nation's fish and wildlife and authorizes the DOI to provide assistance.

7.1.3.25 National Wildlife Refuge System Administration Act of 1966 (as amended by the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57). The *National Wildlife Refuge System Administration Act of 1966*, as amended, provides guidelines and directives for the administration and management of all lands within the system, including "wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas." The Secretary of the Interior is authorized to permit by regulations the use of any area within the system provided "such uses are compatible with the major purposes for which such areas were established."

7.1.3.26 Noise Control Act of 1972. The *Noise Control Act of 1972*, as amended, directs all Federal agencies to carry out, to the fullest extent within agency authority, programs within agency jurisdiction in a manner that furthers a national policy of promoting an environment free from noise that jeopardizes health and welfare.

7.1.3.27 American Antiquities Preservation Act of 1906. The *American Antiquities Preservation Act of 1906*, as amended, protects historic and prehistoric ruins, monuments, and antiquities, including paleontological resources, on federally controlled lands.

7.1.3.28 Federal Insecticide, Fungicide, and Rodenticide Act of 1972. The *Federal Insecticide, Fungicide, and Rodenticide Act of 1972*, as amended, governs the storage, use, and disposal of pesticides through product labeling, registration, and user certification.

7.1.3.29 Federal Land Policy and Management Act of 1976. The *Federal Land Policy and Management Act of 1976*, as amended, governs the use of Federal lands which may be overseen by several agencies and establishes the procedure for applying to the U.S. Bureau of Land Management (BLM) for land withdrawals and right-of-ways.

7.1.3.30 Federal Water Pollution Control Act Amendments of 1972. The *Federal Water Pollution Control Act Amendments of 1972* is the predecessor Federal statute to the *Clean Water Act of 1977*.

7.1.3.31 Historic Sites, Buildings, and Antiquities Act of 1965. The *Historic Sites, Buildings, and Antiquities Act of 1965* sets national policy to preserve historic sites, buildings, and antiquities for the inspiration and benefit of the people of the United States.

7.1.3.32 Materials Act of 1947. The *Materials Act of 1947* provides for the management of minerals, timber, and other construction resource materials on public lands.

7.1.3.33 Federal Urban Land-Use Act of 1949. The *Federal Urban Land-Use Act of 1949* was

enacted to promote harmonious intergovernmental relations. The Act also encourages sound planning, zoning, and land-use practices by prescribing uniform policies and implementing procedures in order that land transactions entered into for the General Services Administration or on behalf of other Federal agencies be consistent with zoning and land-use practices and be made in accordance with planning and development objectives of local governments and local planning agencies concerned.

7.1.3.34 National Defense Authorization Act, Public Law 104-201. Section 3153 of the National Defense Authorization Act requires DOE to develop a future-use plan for defense nuclear facilities, including the Hanford Site. The future-use plans required under this section must address a planning period of at least the next 50 years. The DOE prepared an overview report, *Planning for the Future, An Overview of Future Use Plans at Department of Energy Site*s, which provided a summary of the future land-use planning processes at the Hanford Site, the Idaho National Engineering and Environmental Laboratory, the Rocky Flats Environmental Technology Site, and the Savannah River Site. This overview report was delivered to Congress on October 7, 1998. In addition, DOE submitted the current future-use plans for three of the above four sites, excluding Hanford. Hanford's CLUP will be delivered to members of Congress with the distribution of this Final HCP EIS.

7.2 State Laws

State and local statutes also apply to activities at the Hanford Site when Federal law delegates enforcement or implementation authority to state or local agencies. In general, state laws do not apply to the Federal government based on the National Supremacy Clause that reads, "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding" (Article 4, U.S. Constitution).

7.2.1 State Environmental Policy Act of 1971

The Washington State legislature enacted the *State Environmental Policy Act of 1971* (SEPA). The statute was amended in 1983, and new implementing regulations (the SEPA rules) were adopted and codified by Ecology in 1984 as *Washington Administrative Code* (WAC) 197-11. The purpose and policy sections of the statute are extremely broad, including recognition by the legislature that "each person has a fundamental and inalienable right to a healthful environment. . . ." SEPA contains a substantive mandate that "policies, regulations, and laws of the State of Washington shall be interpreted and administered in accordance with the policies set forth in [SEPA]."

SEPA applies to all branches of state government, including state agencies, municipal and public corporations, and counties. It requires each agency to develop procedures implementing and supplementing SEPA requirements and rules. Although the SEPA does not apply directly to Federal actions, the term "government action" with respect to state agencies is defined to include the issuance of licenses, permits, and approvals. Thus, as in NEPA, proposals (Federal, state, or private) are evaluated, and may be conditioned or denied through the permit process, based on environmental considerations. SEPA does not create an independent permit requirement, but overlays all existing agency permitting activities.

7.2.2 Hazardous Waste Management Act of 1976

The Federal RCRA program allows state enforcement if the state program is consistent

with the Federal program and is at least as stringent. Through the *Hazardous Waste Management Act of 1976*, Ecology has enacted hazardous waste regulations that are consistent with and as stringent as (or more stringent than) the Federal program. Washington has been delegated authority to implement RCRA and *Hazardous and Solid Waste Amendments of 1984* programs. Regulated parties must comply with the requirements of both the Federal program, pursuant to regulations in 40 CFR 260-280, and the state program, pursuant to the requirements of the *Hazardous Waste Management Act of 1976* and WAC 173-303, "Dangerous Waste Regulations."

7.2.3 Model Toxics Control Act of 1989

The State of Washington has adopted a statutory "Superfund" scheme for identifying and responding to releases of hazardous substances. Known as the *Model Toxics Control Act of 1989* (MTCA), the State of Washington law supplements CERCLA. Under this Act, Ecology must investigate and prioritize hazardous waste release sites, provide technical assistance to "potentially liable parties" desiring to perform cleanups, set cleanup standards for hazardous substances, undertake cleanups where appropriate, require and assist in or perform cleanups, provide opportunities for public involvement, establish a scientific advisory board, and regularly report to the legislature. The statute empowers Ecology to gain access to property, enter into settlements (either through administrative orders or consent decrees), file actions or issue orders to compel cleanups, and impose civil penalties and seek recovery of state cleanup costs.

7.2.4 Water Pollution Control Act of 1945

The *Water Pollution Control of 1945*, as amended, establishes a permit system to license and control the discharge of pollutants into waters of the state. Under the permit system, dischargers must reduce releases to a level determined to be technologically and economically achievable, regardless of the condition of the receiving water. Dischargers also must maintain or improve the condition of the receiving water. The state has a general policy prohibiting degradation of existing water quality, and a variety of approaches are used to address the problem of toxic pollutants. Permits are required for both point-source and nonpoint-source discharges.

7.2.5 Growth Management Act of 1989

Most planning by local governments falls under the *State of Washington Growth Management Act* (GMA), which established a state-wide planning framework and created roles and responsibilities for planning at the local, regional, and state levels. The GMA required the largest and fastest growing counties (counties with more than 50,000 people or with a population growth of more than 20 percent in the past 10 years) and cities within those counties to develop new comprehensive plans. Counties not required to plan may elect to do so. Benton, Franklin, and Grant counties, along with the City of Richland, have elected to plan under the GMA requirements. Jurisdictions under GMA must prepare comprehensive plans that project growth for a minimum of 20 years.

7.2.6 Air Quality Regulations

Most of the provisions of the *Washington Clean Air Act of 1991* (WCAA) mirror the requirements of the *Federal Clean Air Act Amendments of 1990* (Federal CAAA). The Federal CAAA establishes a minimum or "floor" for Washington air quality programs. The WCAA authorizes Ecology and local air pollution control authorities to implement programs consistent with the Federal CAAA. For example, the WCAA authorizes an operating permit program, enhanced civil penalties, new administrative enforcement provisions, motor vehicle inspections, and provisions addressing ozone and acid rain.

Washington State also has an extensive set of regulations governing toxic air pollutants (TAPs) (WAC 173-460). These regulations are similar to the programs for regulating hazardous air pollutants (HAP) required by the Federal CAAA. In contrast to the Federal CAAA HAPs program, which applies to new and existing emission sources, the TAP rules apply only to new sources of TAPs, including any modification of an existing source where the modification will increase TAP emissions. Furthermore, Ecology refers to a list of more than 450 individual chemicals that are deemed to be TAPs. The list overlaps with the Federal CAAA list of HAPs, but is considerably longer. The TAP rules are implemented under the New Source Review Program, and the regulatory standard for TAPs is “best available control technology.”

The Washington State Department of Health regulations, “Radiation Protection—Air Emissions” (WAC 246-247), contain standards and permit requirements for the emission of radionuclides to the atmosphere from DOE facilities based on Ecology standards, “Ambient Air Quality Standards and Emission Limits for Radionuclides” (WAC 173-480).

The local air authority, Benton County Clean Air Authority, enforces regulations pertaining to detrimental effects, fugitive dust, incineration products, odor, opacity, asbestos, and sulfur oxide emissions. The Benton County Clean Air Authority also has been delegated authority to enforce the EPA asbestos regulations.

7.2.7 The Shoreline Management Act of 1971

The *Shoreline Management Act of 1971* (RCW 90.58) uses authority passed to the state by the Federal *Rivers and Harbors Act of 1899* (33 U.S.C. 401-413; Section 407, referred to as the *Refuse Act*). Section 10 of the *Rivers and Harbors Act of 1899* prohibits the unauthorized obstruction or alteration of any navigable waters of the United States. Examples of activities requiring a U.S. Army Corps of Engineers permit (33 CFR 322) include constructing a structure in or over any waters of the United States, excavation or deposit of material in such waters, and various types of work performed in such waters, including fill and stream channelization. The state is considered the owner of all navigatible waterways within its boundaries.

The state has passed regulatory responsibility for the *Shoreline Management Act of 1971* to the affected county. Counties in Washington State regulate the shoreline (i.e., from the high-water mark to the low-water mark) through each county’s Shoreline Management Master Plan and a shoreline permit system consistent with Ecology guidelines (WAC 173-16).

7.3 Executive Orders

This section identifies Presidential Executive Orders that clarify issues of national policy and provide guidelines relevant to Hanford Site land-use planning.

7.3.1 Executive Order 11593, Protection and Enhancement of the Cultural Environment

Executive Order 11593 requires Federal agencies to direct their policies, plans, and programs in a way that preserves, restores, and maintains federally owned sites, structures, and objects of historical or archaeological significance.

7.3.2 Executive Order 11988, Floodplain Management

Executive Order 11988 directs Federal agencies to establish procedures to ensure that the potential effects of flood hazards and floodplain management are considered for actions undertaken in a floodplain. The Order further directs that floodplain impacts are to be avoided to the extent practicable.

7.3.3 Executive Order 11990, Protection of Wetlands

Governmental agencies are directed by Executive Order 11990 to avoid, to the extent practicable, any short- and long-term adverse impacts on wetlands wherever there is a practicable alternative. The DOE has issued regulations for compliance with this Order and Executive Order 11988 (10 CFR 1022).

7.3.4 Executive Order 12088, Federal Compliance with Pollution Control Standards

Executive Order 12088 was issued on October 13, 1978. This Order directs Federal agencies to comply with applicable administrative and procedural pollution control standards established by, but not limited to, the CWA, the CAA, the SDWA, TSCA, and RCRA. This Order was amended by Executive Order 12580, issued on January 23, 1987.

7.3.5 Executive Order 12372, Intergovernmental Review of Federal Programs

Executive Order 12372 applies to state review of NEPA documents and to the coordination of state and Federal NEPA processes. The goal of this Executive Order is to foster an intergovernmental partnership and a strengthened coordination and consultation process.

7.3.6 Executive Order 12411, Government Work Space Management Reforms

Executive Order 12411 requires the heads of all Federal executive agencies to establish programs to reduce the amount of work space, used or held, to that amount which is essential for known agency missions; to produce and maintain a total inventory of work space and related furnishings and declare excess to the Administrator of General Services all such holdings that are not necessary to satisfy existing or known and verified planned programs; and to ensure that the amount of office space used by each employee of the agency, or others using agency-controlled space, is held to the minimum necessary to accomplish the task that must be performed.

7.3.7 Executive Order 12512, Federal Real Property Management

Executive Order 12512 authorizes the Administrator of General Services to provide government-wide policy oversight and guidance for Federal real property management. This Executive Order requires all executive departments and agencies to establish internal policies and systems of accountability that ensure effective use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management, and disposal of such assets. All such agencies shall also develop annual real property management improvement plans that include clear and concise goals and objectives related to all aspects of real property management; and identify sales, work space management, productivity, and excess property targets.

7.3.8 Executive Order 12580, Superfund Implementation

Executive Order 12580 delegates to the heads of executive departments and agencies the responsibility (1) for undertaking remedial actions for releases, or threatened releases, that

are not on the National Priorities List; and (2) for removal actions where the release is from a facility under the jurisdiction or control of executive departments and agencies.

7.3.9 Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements

Executive Order 12856 directs Federal agencies to reduce and report toxic chemicals entering any waste stream; improve emergency planning, response, and accident notification; and encourage clean technologies and testing of innovative prevention technologies. The Executive Order also provides that Federal agencies are persons for purposes of the *Emergency Planning and Community Right-to-Know Act of 1986* (SARA Title III), which obliges agencies to meet the requirements of that Act.

7.3.10 Executive Order 12866, Regulatory Planning and Review

Executive Order 12866 requires Federal agencies to promulgate only regulations that are required by law, necessary to interpret the law, or necessary by compelling public need. Agencies are further required to assess costs and benefits associated with available regulatory alternatives in deciding how, and whether, to regulate. This Executive Order also outlines principles that agencies are to follow in the regulatory process, including avoidance of regulations that are inconsistent, incompatible, or duplicative with other regulations and tailoring regulations to impose the least burden on society. The Order also addresses the regulatory planning and review process, including coordination of regulations and maximizing consultation and resolution of conflicts at an early stage in the process. Agencies are also directed to review existing regulations to determine if those regulations should be modified of eliminated. Procedures for centralized review of regulations and resolution of conflicts are also identified in this Executive Order. This Order revokes Executive Orders 12291 and 12498.

7.3.11 Executive Order 12875, Enhancing the Intergovernmental Partnership

Executive Order 12875 addresses the imposition of unfunded mandates upon State, local and Tribal governments by Federal agencies. The Order directs agencies to avoid promulgating regulations that create an unfunded mandate that is not required by statute unless funding is available to pay costs incurred by State, local, or Tribal governments, and to develop an effective process for representatives of these governments to provide meaningful and timely input into the development of regulatory proposals that contain significant unfunded mandates. The Order further directs agencies to increase flexibility for State and local waivers. Executive Order 12875 supplements, but does not supercede, Executive Order 12866.

7.3.12 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 directs all Federal agencies, to the greatest extent practicable and permitted by law, to achieve environmental justice by identifying and addressing disproportionately high and adverse human health or environmental effects of agency programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions. The Executive Order creates an Interagency Working Group on Environmental Justice and directs each Federal agency, to the extent permitted by existing law, to develop strategies to identify and address environmental justice concerns. The Order further directs each Federal agency, to the extent permitted by existing law, to collect, maintain, analyze, and make available information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations. This action is required when these facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. The accompanying

Presidential letter to heads of agencies identifies documents prepared under NEPA as the vehicle for complying with the Order.

7.3.13 Executive Order 13007, Indian Sacred Sites

Executive Order 13007 directs Federal agencies to take measures to protect and preserve American Indian Tribes' religious practices. Federal agencies shall, to the extent practicable and permitted by law, and when consistent with essential agency functions, accommodate access to and ceremonial uses of sacred sites by American Indian Tribes' religious practitioners. Further, the Executive Order states that Federal agencies will comply with presidential direction to maintain government-to-government relations with Tribal governments.

7.3.14 Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Because a growing body of scientific knowledge demonstrates that children may suffer disproportionately from environmental health and safety risks, Executive Order 13045 directs each Federal agency to make it a high priority to identify and assess environmental health and safety risks that may disproportionately affect children. Each Federal agency will, to the extent permitted by law and appropriate, and consistent with the agency mission, ensure that its policies, programs, activities, and standards address potential disproportionate risks to children.

7.3.15 Executive Order, Invasive Species

Issued on February 11, 1999, Executive Order 13112, *Invasive Species*, is intended to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause. The Executive Order establishes an Invasive Species Council, whose members include the Secretaries of numerous Federal agencies (not including DOE), and a stakeholders' Advisory Committee to provide information and advice to the Council. Within 18 months after issuance of this Executive Order, the Council is to have prepared and issued a National Invasive Species Management Plan detailing and recommending performance-oriented goals and objectives and specific measures of success for Federal agencies concerned about invasive species. The Management Plan, which will be updated biennially, is to be developed through a public process and in consultation with Federal agencies and stakeholders.

7.4 Presidential and Executive Branch Policies

President Clinton issued a memorandum to the heads of executive departments and agencies regarding government-to-government relations with Tribal governments on April 29, 1994. This memorandum directed executive departments and agencies to implement activities that affect Tribal rights in a "knowledgeable, sensitive manner respectful of tribal sovereignty." The memorandum outlined principles for executive departments and agencies to follow in their interactions with Tribal governments and clarify the responsibility of the Federal government to operate within a government-to-government relationship with federally recognized American Indian Tribes.

The U.S. Department of Justice recently reaffirmed a long-standing policy regarding the relationship between the Federal government and American Indian Tribes (61 FR 29424). The policy states that the United States recognizes the sovereign status of Indian Tribes as "domestic dependent nations" from its earliest days. The Constitution recognizes Indian sovereignty by classifying Indian treaties among the "supreme Law of the Land," and establishes

Indian affairs as a unique area of Federal concern.

The DOE American Indian policy commits DOE to working with Tribal governments on a government-to-government basis, recognizes the Federal trust relationship with Tribes and Tribal members' treaty rights, and commits the department to consultation with Tribes regarding agency activities that could potentially affect the Tribes.

7.5 U.S. Department of Energy Regulations, Orders, and Other Agreements and Requirements

This section identifies DOE regulations implementing statutory environmental, health, and safety protection responsibilities and requirements that must be met by operating contractors.

The DOE is responsible for establishing a comprehensive health, safety, and environmental program for its facilities, as authorized by the *Atomic Energy Act of 1954* (AEA). The regulatory mechanisms used by DOE to manage its facilities are the promulgation of regulations and issuance of DOE orders.

DOE regulations are found in Title 10 of the CFR. These regulations address such areas as energy conservation, administrative requirements and procedures, nuclear safety, and classified information. For purposes of this EIS, relevant regulations include the following:

- 10 CFR 820, "Procedural Rules for U.S. Department of Energy Nuclear Activities"
- 10 CFR 830.120, "Quality Assurance Requirements"
- 10 CFR 834, "Radiation Protection of the Public and the Environment"
- 10 CFR 835, "Occupational Radiation Protection"
- 10 CFR 1021, "*National Environmental Policy Act* Implementing Procedures"
- 10 CFR 1022, "Compliance with Floodplain/Wetlands Environmental Review Requirements."

The DOE orders generally set forth policies and identify the need for programs and internal procedures to implement those policies.

The DOE, represented by the Bonneville Power Administration, entered into the *Vernita Bar Settlement Agreement* with several Public Utility Districts, the National Marine Fisheries Service, the States of Washington and Oregon, the Confederated Tribes of the Yakama Nation, the CTUIR, and the Confederated Tribes of the Colville Indian Reservation in June 1988. The Agreement established the obligation of the parties to protect mid Columbia summer/fall Chinook Salmon run at Vernita Bar by requiring maintenance of a sufficient amount of water flowing over Vernita Bar (protection-level flow) to provide protection to salmon redds. The Agreement was approved by the Federal Energy Regulatory Commission as a condition of license for the Priest Rapids Dam. Flows are to be maintained through the spawning period, pre-hatch period, post-hatch period, and emergence period, from approximately December 15 through May 31 each year. The Agreement limits river flow in the fall to 1,960 cubic meters per second (70,000 cubic feet per second), with post-spawning flows determined annually based on field surveys that identify when, where, and to what extent spawning has occurred (NPS 1994). Parties to the agreement may request reopening of the agreement and the imposition by the Federal Energy

Regulatory Commission of different, additional, or modified fall Chinook salmon protection measures at Vernita Bar.

The Office of Management and Budget Circular A-95 provides guidance to Federal agencies for cooperation with state and local agencies in the evaluation, review, and coordination of Federal and federally assisted programs and projects.

7.6 Consultations

The NEPA and the Council on Environmental Quality (CEQ) regulations require consultation with Federal, Tribal, state, and local agencies with jurisdiction or special expertise regarding any environmental impact. Agencies involved include those with authority to issue applicable permits, licenses, and other regulatory approvals; as well as those agencies responsible for protecting significant resources (e.g., endangered species, critical habitats, or historic resources). Federal and state agencies and Tribal governments have been, and will continue to be, consulted during the development of the Final HCP EIS. Representatives of Federal, Tribal, state, and local agencies were involved in scoping for the HRA-EIS through involvement in the Hanford Future Site Uses Working Group and will be consulted in the preparation of the Final HCP EIS. Copies of letters from DOE inviting the participation of cooperating agencies and consulting Tribal governments are presented in Appendix B. Copies of response letters received by DOE are also included.

7.6.1 Consultation with Other Federal Agencies

In accordance with CEQ guidance encouraging lead agencies to consult with other agencies during the NEPA process, DOE invited other Federal agencies to participate in scoping and development of the Final HCP EIS. The DOI (USFWS and the National Park Service [NPS]) and the EPA were represented on the Hanford Future Site Uses Working Group and assisted in developing the group's report (FSUWG 1992), which was adopted as a scoping comment for the HRA-EIS. The emphasis of the HRA-EIS on future land use led to the development of a comprehensive land-use plan for the Hanford Site, which was issued as Appendix M to the August 1996 Draft HRA-EIS. Other Federal agencies were invited to participate in a series of meetings geared to identify values associated with Hanford Site resources. The DOI (USFWS, BLM, and the Bureau of Indian Affairs [BIA]), EPA, and Department of Commerce (National Marine Fisheries Service) were invited to participate in these meetings. Subsequent to identification of values, DOE developed a comprehensive land-use plan that incorporated values identified by the participants in the meetings.

The DOE received numerous comments on the August 1996 Draft HRA-EIS that emphasized the need for more extensive agency participation in land-use planning at the Hanford Site and the need to consider alternatives to the single plan presented in the Comprehensive Land-Use Plan. The DOI, in particular, requested formal involvement in the land-use planning process for the Hanford Site. As a result of these comments, DOE cut the scope of the HRA-EIS to emphasize future land use at the Hanford Site and formally invited other Federal agencies to cooperate in preparation of the downsized Revised Draft and the Final HCP EIS.

The DOE also initiated a series of meetings through which alternative land-use plans were developed and analyzed. Representatives of the DOI (USFWS, BLM, and Bureau of Reclamation [BoR]) have participated in these meetings and have assisted in the development of the Final HCP EIS.

In addition to consultation on the land-use planning process, DOE has formally requested

updated lists of endangered species from the USFWS and the National Marine Fisheries Service. The DOE has also requested that the BoR provide information regarding the availability of water for potential development of irrigated agriculture on the Wahluke Slope. The DOE also consulted with the Natural Resources Conservation Service (formerly known as the Soil Conservation Service) regarding "prime and unique farmlands" on the Hanford Site (Jason Associates 1996).

7.6.2 Consultation with Affected Tribal Governments

The policy of the Federal government for relations with Tribal governments is clearly stated. The Department of Justice recently reaffirmed a long-standing policy regarding the relationship between the Federal government and American Indian Tribes (61 FR 29424). The policy emphasizes the Federal trust responsibility in government-to-government relations with Indian Tribes. Furthermore, the policy of the present Presidential Administration recognizes the sovereignty of Tribal governments, supports the Tribal Governments' rights of self-government and self-determination, and to commit to government-to-government relationships with Tribal governments. The official policy also emphasizes the responsibility of Federal agencies to remove impediments to working directly with Tribal governments on activities that effect the trust property and/or governmental rights of the Tribes. The DOE American Indian policy commits DOE to working with American Indian Tribal governments on a government-to-government basis, recognizes that some Tribes have treaty-protected interests in resources outside reservation boundaries, recognizes the Federal trust relationship to American Indian Tribes imposes duties on DOE, commits to consult with American Indian Tribal governments concerning DOE activities that potentially affect Tribes, and commits to remove impediments to working directly and effectively with Tribal governments in accordance with the Presidential policy. Consultations with Tribal governments have been, and will continue to be, carried out in accordance with these policies.

The DOE invited Tribal Governments to participate in the scoping of the August 1996 Draft HRA-EIS through the Hanford Future Site Uses Working Group, in development of the Comprehensive Land-Use Plan through the meeting held by DOE to identify values associated with Hanford Site resources, and in development of the Final HCP EIS as consulting Tribal governments. Representatives of the CTUIR, Yakama Nation, and Nez Perce Tribe were participants on the Working Group. The Wanapum Band, CTUIR, Yakama Nation, and Nez Perce Tribe all participated in meetings on comprehensive land-use planning prior to issuance of the August 1996 Draft HRA-EIS. Nevertheless, Tribal governments expressed concern that the August 1996 Draft HRA-EIS presented only one alternative for land use at the Hanford Site and indicated a desire to have a greater role in the planning process. As a result of these concerns, and the concerns of other entities regarding land-use planning at the Hanford Site, DOE invited the affected Tribes to participate in the land-use planning process. Representatives of the CTUIR, Nez Perce Tribe, and Yakama Nation have been consulted with in the process. The CTUIR and Nez Perce Tribe representatives have provided alternatives for analysis in the Final HCP EIS.

7.6.3 Consultation with State and Local Governments

The DOE has invited state and local government agencies to participate in all phases of the Final HCP EIS. State and local governments were invited, through their participation in the Hanford Future Site Uses Working Group, to participate in the scoping of the August 1996 Draft HRA-EIS. They participated in the development of the Comprehensive Land-Use Plan through a meeting held by DOE to identify values associated with Hanford Site resources, and, as cooperating agencies, they helped develop the Final HCP EIS. Representatives from the states of Washington and Oregon; Benton, Franklin, and Grant counties; and the Port of Benton participated on the Working Group. Representatives from Ecology and the Washington Department of Fish and Wildlife; Benton, Adams, Franklin, and Grant County Commissioners'

offices; Benton County and City of Richland Planning Departments; and the Port of Benton were invited to participate in meetings on comprehensive land-use planning prior to development of the August 1996 Draft HRA-EIS. Upon issuance of the August 1996 Draft HRA-EIS, these government entities expressed concern that the Comprehensive Land-Use Plan presented only one alternative for land use at the Hanford Site. Several local agencies expressed an interest in working with DOE in the planning process. As a result of these concerns, and concerns of other entities regarding land-use planning at the Hanford Site, DOE invited state and local governments to cooperate in development of this Final HCP EIS. Representatives of these entities have either participated in the planning process or been consulted during the process of developing this Final HCP EIS.

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