Kittitas County Commissioners

Continued Hearing Staff Report

Agenda Date: January 10, 2017

Action requested:

Consider the additional analysis and conditional language as requested for the Iron Horse Solar Farm Conditional Use Permit (CU-15-00006).

Background:

OneEnergy Development LLC authorized agent for Bill Hanson, landowner, has submitted a conditional use application for a Major Alternative Energy Facility on approximately 68 acres. The subject property is zoned Agriculture 20.

This proposal is located on 4 parcels, located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers 17-19-01000-0028, 17-19-01000-0023, 17-19-01000-0043, and 17-19-01000-0042.

SEPA review as per WAC 197-11 for this project was conducted in July of 2016. An MDNS under the provisions of WAC 197-11-355 and WAC 197-11-390 was issued on August 10, 2016. Comments were received from agencies and the general public. On August 10, 2016 the SEPA Official (Robert Hansen) issued an MDNS for the proposal. A timely appeal was filed with the BOCC on August 24, 2016 by "Save Our Farms! Say No to Iron Horse". The appeal was heard before the Kittitas County Hearing Examiner on Thursday October 20, 2016. The Hearing Examiner issued a decision on November 8, 2016 which, based on listed findings, held that *"…the August 10, 2016 SEPA determination by the responsible official in the above referenced matter is affirmed in every respect"*.

The conditional use permit application was submitted to Kittitas County Community Development Services (CDS) on November 12th, 2015. On December 17th, 2015 the application was deemed incomplete following a mandated pre-application meeting between county staff and representatives of the applicant. Materials required at that time included a transportation concurrency application. On March 3rd, 2016 revised project materials were submitted by the applicant who included the required information as well as an updated narrative and SEPA checklist. The application was deemed complete on May 12th, 2016. The Notice of Application for the conditional use permit was issued on May 23rd, 2016. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on June 7th, 2016.

The Hearing Examiner hearing was held on October 20, 2016. Representatives of the applicant presented materials and testified at the hearing. Members of the public testified. On November 9, 2016, the Kittitas County Hearing Examiner recommended that the Iron Horse Solar Farm Conditional Use Permit (CU-15-00006) be approved with the staff recommended conditions plus an additional two conditions.

On December 20, 2016 a closed record hearing was held by the Kittitas County Board of County Commissioners (BoCC) to consider the Hearing Examiner's recommendation and a make a final decision

for the Conditional Use Permit. Following a brief staff presentation, the BoCC discussed the proposal at length and instructed staff to research and present additional information with respect to the following items:

1. **Noise**

   The BoCC questions and comments related to noise centered on what appropriate thresholds for volume should be, what if any formal monitoring process should be established, and who would provide and oversee enforcement duties. Staff's position at the time of the hearing was that the narrative and empirical data presented indicated that the volumes produced would not be substantial enough to warrant any mitigation measures. In appendix G (Index Document 6; BoCC record page 776), the application provided information regarding operational noise levels (40 A weighted decibels at 200 ft). These levels will be substantially lower than the maximum threshold provisioned by state law (WAC 173-60; attached) no matter which EDNA source and receiving designations are utilized. The Hearing Examiner buttressed the regulatory framing by inserting condition 44.2 (page 33 of BoCC record) which requires the project to comply with WAC 173-60. The WAC provides guidance with respect to enforcement in section 090 stating that:

   > *"Noise measurement for the purposes of enforcing the provisions of WAC 173-060-040 shall be measured in dBA with a sound level meter with the point of measurement being at any point within the receiving property. Such enforcement shall be undertaken only upon receipt of a complaint made by a person who resides, owns property, or is employed in the area affected by the noise complained of, EXCEPT for parks, recreational areas, and wildlife sanctuaries."*

   Section 110 however, goes on to stipulate that:

   > *"(1) The department conceives the function of noise abatement and control to be primarily the role of local government and intends actively to encourage local government to adopt measures for noise abatement and control. Wherever such measures are made effective and are being actively enforced, the department does not intend to engage directly in enforcement activities.*
   >
   > *(2) No ordinance or resolution of any local government which imposes noise control requirements differing from those adopted by the department shall be effective unless and until approved by the director. If approval is denied, the department, following submission of such local ordinance or resolution to the department, shall deliver its statement or order of denial, designating in detail the specific provision(s) found to be objectionable and the precise grounds upon which the denial is based, and shall submit to the local government, the department's suggested modification.*
   >
   > *(3) The department shall encourage all local governments enforcing noise ordinances pursuant to this chapter to consider noise criteria and land use planning and zoning.*

Kittitas County, of course, does possess code addressing public disturbance and unlawful noise (staff is not certain whether existing language received approval by the "department") but it is decidedly less succinct with respect to determining parameters for potential offenses than the state statute.

KCC 9.45.030 Public disturbance - noise unlawful when.

1. *It is unlawful for any person to make, continue, or cause to be made or continued or any person owning or in possession of property to make, continue, or cause to be made or continued or allow to originate from the property any sound which:*

    a. *Is plainly audible within any dwelling unit which is not the source of the sound or is generated within two hundred feet of any dwelling unit, and;*

    b. *Either reasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.*

2. *Sound which is "plainly audible" is sound that can be understood or identified.*

3. *It shall be a rebuttable presumption that sounds created between 8:00 a.m. and 10:00 p.m. do not unreasonably annoy, disturb, injure, or endanger.*

The Cornell Law School legal dictionary (and Wikipedia) defines a Rebuttable Presumption as *"A particular rule of law that may be inferred from the existence of a given set of facts and that is conclusive absent contrary evidence."*

Staff was not able to find any indication in the record referencing the point at which the sun is high enough in the sky to initiate power generation. The sun will rise on June 20th of this year at 5:11 a.m. (setting at 9:11p.m.), it is unclear to staff if any inversion will take place prior to 8:00 a.m., and if so what the decibel level will be (or if the noise level may fluctuate based on electricity levels generated).

Kittitas County Code adds *"Sounds created by lawfully established commercial and industrial uses"* as one of its 21 sounds that are **exempt** from the code. The code also clearly stipulates that *"The county sheriff and other law enforcement officers are authorized and directed to enforce the provisions of this chapter. The provisions of this chapter shall be cumulative, nonexclusive, and supplementary, and shall not affect any other remedy, including without limitation, the provisions of Chapter 70.107 RCW.*

Recommendation: Staff believes that within framework of existing code and the proposed conditions there is sufficient regulatory infrastructure to ensure that should noise emissions from the project exceed acceptable levels; the county will have the means to address, mitigate, and correct the problem. Should the BoCC desire more

explicit and clearly defined thresholds, staff would suggest language akin to the following:

> **Findings:** The Kittitas County Board of Commissioners finds that the proposed Iron Horse Solar Farm (CU-15-00006) shall be defined as a Class ___ EDNA sending site. Surrounding properties with residential structures and occupancy shall be defined as Class ___ EDNA receiving properties. Noise levels from the proposed project in excess of ___ shall be deemed in violation of WAC 173-60-040(2)(a).
>
> **Conditions:** Noise levels from the proposed project in excess of ___ shall not intrude into adjacent residential properties as designated in WAC 173-60-040.

Staff believes, based on the documentation provided, that the noise levels intruding onto adjacent properties will not exceed the levels deemed acceptable by Washington State law and Kittitas County code; as such an active noise monitoring process or program is unwarranted. As suggested above, in the event that this determination proves to be incorrect, an aggrieved party may report violations to the County Sheriff's office (or Community Development Services) and appropriate action and remediation can be undertaken. Should the BoCC desire a more proactive monitoring process or program staff would suggest the following:

> **Conditions:** Following full system activation and operation of the Iron Horse Solar Farm (CU-15-00006) Kittitas County Community Development Services shall utilize appropriate measures and methodology to ensure the facility is in full compliance with (either):
>
> > WAC 173-060 and/or KCC chapter 9.45. Measurements and readings shall be taken before and after 8:00 a.m. to ensure compliance.
> >
> > Or:
> >
> > condition #__ of these findings, conclusions, and conditions.
>
> Should any renovation, replacement, or modification to power inverters take place the proponent or current owner/operator of the Iron Horse Solar Farm shall notify CDS, and additional testing will be performed to ensure conformance with the above condition.

2. <u>Fence</u>

The BoCC's concerns and comments raised with respect to the perimeter fence centered on whether a three tiered barbed wire chain link security fence would meet the spirit and intent of the GMA and its required protections on "Rural Character". To date staff has not been able to find specific references to fencing types and their adherences to elements of GMA and rural character. Both the county comprehensive plan and the GMA do however specifically

reference measures which assure*"…visual compatibility of rural development with the surrounding rural area…"*.Staff feels we would be remiss if we did not note several recent instances of permitted development which utilized security fencing techniques identical or very similar to the one being proposed. Hay operations, Mini Storage, Utility Infrastructure, and other security sensitive operations have been, and will continue to use, similar design and construction. Current building and development regulations do not provision for the review or conditioning of fences for permitted uses which do not require SEPA.

As part of this discussion Staff feels compelled elaborate with respect to issues, characteristics, or elements of a project which are of a less binary nature then say, noise level thresholds. It is the preference of CDS to condition proposals in a less prescriptive fashion whenever possible. The reason for this is that we are by design reviewers, not creators or developers. We do not purport to know the latest techniques, materials, and styles which may be able to solve an issue in the most appealing and cost effective manner. It is important that the applicant (the creators) be given a clear set of acceptable parameters to work within and then be allowed to develop a solution that works best for them. Especially when working with such general concepts as "Rural Character". If the proposal meets the letter, spirit, and intent of the state and local regulatory framework, it can be approved. At this stage of project development (especially one of this magnitude) it is important that the applicant be given holistic sense of what the county expects to be done if the proposal is to come to fruition. From that point they may consider all aspects and requirements and decide whether it is in their interests to invest the time and resources to take the project to the next level. The interim step of requiring a proponent to develop a plan, study, design, or proposal that fits within the parameters we specify relieves CDS of the burden of detail, and gives the applicant the opportunity to determine if the project can still come in between the financial margins as originally envisioned.

Recommendation: Based on the arguments made and attachments referenced above, it is Staff's believe that a solid case could be made that a chain link three tiered barb wire security fence **is visually compatible with the rural development of the surrounding area**. Notwithstanding, should the Board prefer a more restrictive interpretation of codified state and local statute, staff would recommend the following language:

> **Findings:** Chain link three tiered barb wire security fences are in function and appearance not in keeping with the visual compatibility of rural development within the surrounding rural area of the Iron Horse Solar Farm (CU-15-00006), and as such not in conformance with the County's Comprehensive Plan and the Washington State Growth Management Act with respect to the preservation Rural Character.
>
> **Conditions:** Replace condition 44.1 from the Hearing Examiner's recommendation with the following (variables are, of course, at the BoCC's discretion):
>
> The chain link three tiered barb wire security fencing as proposed is not in keeping with Rural Character and the visual compatibility of rural development within the surrounding area of the Iron Horse Solar Farm. The applicant shall submit to the county a perimeter

security design and plan for review by staff and approval by the BoCC which includes but is not limited to the following:

1. No barbed, razor, or concertina wire.
2. No chain link fencing that is not enhanced or modified in some fashion to give it a less industrial appearance; or
3. A landscape plan which does, or will within a one year time frame, adequately conceal the chain link fence sections abutting or within 150 feet of public roads. The landscape plan must:
    a. Be designed with native and/or non-invasive plant species in conjunction with the Washington State Department of Fish and Wildlife and Kittitas County Weed Board; and
    b. Include 125% (of initial installation cost) financial bonding or surety for restoration in the event that the all or part of the vegetation does not survive for a period of five years.

3. <u>Decommission:</u> The discussion of the BoCC regarding the decommission plan was focused on the lack of specificity. The Board indicated that a more detailed description and guidelines for the proposed agreement and requirements were in order and suggested Staff research and review wind turbine projects for guidance. Staff consulted the Swauk Wind Project, and found it provided substantial material for the Board to consider.

Recommendation: A detailed decommissioning plan is in the best interest of the county and its citizens. Staff recommends the BoCC consider the following and utilize it to replace condition 36 in the Hearing Examiner's recommendation.

Findings: A detailed decommissioning plan is in the best interest of the county and its citizens to ensure that upon termination of operations the land is restored to its existing condition and capacity as well as to relieve the county from any financial or legal responsibility or liability with respect to site reclamation and restoration.

Conditions: Prior to final approval and issuance of the Conditional Use Permit the applicant shall submit to the county for staff review and BoCC approval a Decommissioning Plan that will contain but not be limited to provisions with respect to the following:

1. Sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues reasonably anticipated. The Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project site or otherwise protect the public against risks or danger resulting from the Project. The Plan will include provisions to ensure that soils within the project site are tested for, and if necessary remediated from, any form of contamination that is a result of site construction, development, operations, maintenance, or decommissioning.
2. The applicant or any transferee, as the case may be, shall decommission and dismantle the project within twelve (12) months of the date of the cessation of power sales.
3. The twelve (12) month period to perform the decommissioning may be extended if there is a delay caused by events beyond the control of the applicant including but not limited to inclement weather conditions, equipment failure, wildlife considerations or the availability of equipment to support decommissioning. An extension (or extensions) may also be granted by the county if the applicant or any transferee can demonstrate that there is reasonable and substantial progress being made toward the resumption of operations. The County shall be granted

access to the project site during decommissioning for purposes of inspecting any work or to perform evaluations. County personnel on the project site shall observe all worker safety requirements enforced and observed by the Applicant and its contractors. If requested by the County, the applicant will provide monthly status reports until this decommissioning work is completed. Decommissioning the project shall involve the removal of all photovoltaic panels, inverters, wires, pilings, and associated hardware related to the generation and transmission of electricity. The removal of any cement slabs as well as ancillary buildings, structures, and road improvements will be at the discretion of the property owner. Decommissioning shall occur in the order of removing the photovoltaic panels and their associated pilings as the first priority and performing the remaining elements immediately thereafter.

4. The applicant or any transferee, at a time deemed acceptable by the County, shall post funds or security in an amount which is at least 135% of the estimated decommissioning costs (as determined by mutual agreement) and will ensure the availability of said funds to Kittitas County in the event the applicant or transferee fails to timely or adequately perform its decommissioning duties herein. The utilization of said funds shall be restricted to decommissioning operation and requirements as detailed by the plan. Residual funds (not used specifically for reclamation or remediation) shall be returned to the applicant or any transferee once the decommissioning operations have been completed to the satisfaction of the County. The decommissioning funds and surety shall be in the form of a guarantee or performance bond, letter of credit or other security device deemed satisfactory to, and enforceable by the County. Such funds shall remain in place until decommissioning is completed to the satisfaction of the county.

Interaction: Kittitas County Community Development Services staff.

Handling: none

Lead Staff: Jeff Watson

Chapter 173-60 WAC

Last Update: 12/6/00

MAXIMUM ENVIRONMENTAL NOISE LEVELS

Chapter Listing

WAC Sections

173-60-010
Authority and purpose.

These rules are adopted pursuant to chapter 70.107 RCW, the Noise Control Act of 1974, in order to establish maximum noise levels permissible in identified environments, and thereby to provide use standards relating to the reception of noise within such environments. Vessels, as defined in RCW 88.12.010(21) and regulated for noise under chapter 88.12 RCW (Regulation of recreational vessels), shall be exempt from chapter 173-60 WAC.

[Statutory Authority: Chapter 70.107 RCW. WSR 94-12-001 (Order 92-41), § 173-60-010, filed 5/18/94, effective 6/18/94; Order 74-32, § 173-60-010, filed 4/22/75, effective 9/1/75.]

173-60-020
Definitions.

(1) "Background sound level" means the level of all sounds in a given environment, independent of the specific source being measured.

(2) "dBA" means the sound pressure level in decibels measured using the "A" weighting network on a sound level meter. The sound pressure level, in decibels, of a sound is 20 times the logarithm to the base 10 of the ratio of the pressure of the sound to a reference pressure of 20 micropascals.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Distribution facilities" means any facility used for distribution of commodities to final consumers, including facilities of utilities that convey water, waste water, natural gas, and electricity.

(6) "EDNA" means the environmental designation for noise abatement, being an area or zone (environment) within which maximum permissible noise levels are established.

(7) "Existing" means a process, event, or activity in an established area, producing sound subject to or exempt from this chapter, prior to the effective date of September 1, 1975.

(8) "Local government" means county or city government or any combination of the two.

(9) "Noise" means the intensity, duration and character of sounds, from any and all sources.

(10) "Person" means any individual, corporation, partnership, association, governmental body, state agency or other entity whatsoever.

(11) "Property boundary" means the surveyed line at ground surface, which separates the real property owned, rented, or leased by one or more persons, from that owned, rented, or leased by one or more other persons, and its vertical extension.

(12) "Racing event" means any motor vehicle competition conducted under a permit issued by a governmental authority having jurisdiction or, if such permit is not required, then under the auspices of a recognized sanctioning body.

(13) "Receiving property" means real property within which the maximum permissible noise levels specified herein shall not be exceeded from sources outside such property.

(14) "Sound level meter" means a device which measures sound pressure levels and conforms to Type 1 or Type 2 as specified in the American National Standards Institute Specification S1.4-1971.

[Statutory Authority: Chapter **70.107** RCW. WSR 94-12-001 (Order 92-41), § 173-60-020, filed 5/18/94, effective 6/18/94; WSR 83-15-046 (Order DE 82-42), § 173-60-020, filed 7/19/83; Order DE 77-1, § 173-60-020, filed 6/1/77; Order 74-32, § 173-60-020, filed 4/22/75, effective 9/1/75.]

173-60-030
Identification of environments.

(1) Except when included within specific prior designations as provided in subsections (2), (3), and (4) of this section, the EDNA of any property shall be based on the following typical uses, taking into consideration the present, future, and historical usage, as well as the usage of adjacent and other lands in the vicinity.

(a) Class A EDNA - Lands where human beings reside and sleep. Typically, Class A EDNA will be the following types of property used for human habitation:

(i) Residential

(ii) Multiple family living accommodations

(iii) Recreational and entertainment, (e.g., camps, parks, camping facilities, and resorts)

(iv) Community service, (e.g., orphanages, homes for the aged, hospitals, health and correctional facilities)

(b) Class B EDNA - Lands involving uses requiring protection against noise interference with speech. Typically, Class B EDNA will be the following types of property:

(i) Commercial living accommodations

(ii) Commercial dining establishments

(iii) Motor vehicle services

(iv) Retail services

(v) Banks and office buildings

(vi) Miscellaneous commercial services, property not used for human habitation

(vii) Recreation and entertainment, property not used for human habitation (e.g., theaters, stadiums, fairgrounds, and amusement parks)

(viii) Community services, property not used for human habitation (e.g., educational, religious, governmental, cultural and recreational facilities).

(c) Class C EDNA - Lands involving economic activities of such a nature that higher noise levels than experienced in other areas is normally to be anticipated. Persons working in these areas are normally covered by noise control regulations of the department of labor and industries. Uses typical of Class A EDNA are generally not permitted within such areas. Typically, Class C EDNA will be the following types of property:

(i) Storage, warehouse, and distribution facilities.

(ii) Industrial property used for the production and fabrication of durable and nondurable man-made goods

(iii) Agricultural and silvicultural property used for the production of crops, wood products, or livestock.

(d) Where there is neither a zoning ordinance in effect nor an adopted comprehensive plan, the legislative authority of local government may, by ordinance or resolution, designate specifically described EDNAs which conform to the above use criteria and, upon departmental approval, EDNAs so designated shall be as set forth in such local determination.

(e) Where no specific prior designation of EDNAs has been made, the appropriate EDNA for properties involved in any enforcement activity will be determined by the investigating official on the basis of the criteria of (a), (b), and (c) of this subsection.

(2) In areas covered by a local zoning ordinance, the legislative authority of the local government may, by ordinance or resolution designate EDNAs to conform with the zoning ordinance as follows:

(a) Residential zones - Class A EDNA

(b) Commercial zones - Class B EDNA

(c) Industrial zones - Class C EDNA

Upon approval by the department, EDNAs so designated shall be as set forth in such local determination. EDNA designations shall be amended as necessary to conform to zone changes under the zoning ordinance.

(3) In areas not covered by a local zoning ordinance but within the coverage of an adopted comprehensive plan the legislative authority of the local government may, by ordinance or resolution designate EDNAs to conform with the comprehensive plan as follows:

(a) Residential areas - Class A EDNA

(b) Commercial areas - Class B EDNA

(c) Industrial areas - Class C EDNA

Upon approval by the department EDNAs so designated shall be as set forth in such local determination. EDNA designations shall be amended as necessary to conform to changes in the comprehensive plan.

(4) The department recognizes that on certain lands, serenity, tranquillity, or quiet are an essential part of the quality of the environment and serve an important public need. Special

designation of such lands with appropriate noise level standards by local government may be adopted subject to approval by the department. The director may make such special designation pursuant to the procedures of the Administrative Procedure Act, chapter **34.04** RCW.

[Order 74-32, § 173-60-030, filed 4/22/75, effective 9/1/75.]

173-60-040
Maximum permissible environmental noise levels.

(1) No person shall cause or permit noise to intrude into the property of another person which noise exceeds the maximum permissible noise levels set forth below in this section.

(2)(a) The noise limitations established are as set forth in the following table after any applicable adjustments provided for herein are applied.

EDNA OF NOISE SOURCE	EDNA OF RECEIVING PROPERTY		
	Class A	Class B	Class C
CLASS A	55 dBA	57 dBA	60 dBA
CLASS B	57	60	65
CLASS C	60	65	70

(b) Between the hours of 10:00 p.m. and 7:00 a.m. the noise limitations of the foregoing table shall be reduced by 10 dBA for receiving property within Class A EDNAs.

(c) At any hour of the day or night the applicable noise limitations in (a) and (b) above may be exceeded for any receiving property by no more than:

(i) 5 dBA for a total of 15 minutes in any one-hour period; or

(ii) 10 dBA for a total of 5 minutes in any one-hour period; or

(iii) 15 dBA for a total of 1.5 minutes in any one-hour period.

[Order 74-32, § 173-60-040, filed 4/22/75, effective 9/1/75.]

173-60-050
Exemptions.

(1) The following shall be exempt from the provisions of WAC **173-60-040** between the hours of 7:00 a.m. and 10:00 p.m.:

(a) Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances.

(b) Sounds created by the discharge of firearms on authorized shooting ranges.

(c) Sounds created by blasting.

(d) Sounds created by aircraft engine testing and maintenance not related to flight operations: Provided, That aircraft testing and maintenance shall be conducted at remote sites whenever possible.

(e) Sounds created by the installation or repair of essential utility services.

(2) The following shall be exempt from the provisions of WAC **173-60-040** (2)(b):

(a) Noise from electrical substations and existing stationary equipment used in the conveyance of water, waste water, and natural gas by a utility.

(b) Noise from existing industrial installations which exceed the standards contained in these regulations and which, over the previous three years, have consistently operated in excess of 15 hours per day as a consequence of process necessity and/or demonstrated routine normal operation. Changes in working hours, which would affect exemptions under this regulation, require approval of the department.

(3) The following shall be exempt from the provisions of WAC **173-60-040**, except insofar as such provisions relate to the reception of noise within Class A EDNAs between the hours of 10:00 p.m. and 7:00 a.m.

(a) Sounds originating from temporary construction sites as a result of construction activity.

(b) Sounds originating from forest harvesting and silvicultural activity.

(4) The following shall be exempt from all provisions of WAC **173-60-040**:

(a) Sounds created by motor vehicles when regulated by chapter **173-62** WAC.

(b) Sounds originating from aircraft in flight and sounds that originate at airports which are directly related to flight operations.

(c) Sounds created by surface carriers engaged in interstate commerce by railroad.

(d) Sounds created by warning devices not operating continuously for more than five minutes, or bells, chimes, and carillons.

(e) Sounds created by safety and protective devices where noise suppression would defeat the intent of the device or is not economically feasible.

(f) Sounds created by emergency equipment and work necessary in the interests of law enforcement or for health safety or welfare of the community.

(g) Sounds originating from motor vehicle racing events at existing authorized facilities.

(h) Sounds originating from officially sanctioned parades and other public events.

(i) Sounds emitted from petroleum refinery boilers during startup of said boilers: Provided, That the startup operation is performed during daytime hours whenever possible.

(j) Sounds created by the discharge of firearms in the course of hunting.

(k) Sounds caused by natural phenomena and unamplified human voices.

(l) Sounds created by motor vehicles, licensed or unlicensed, when operated off public highways EXCEPT when such sounds are received in Class A EDNAs.

(m) Sounds originating from existing natural gas transmission and distribution facilities. However, in circumstances where such sounds impact EDNA Class A environments and complaints are received, the director or his designee may take action to abate by application of EDNA Class C source limits to the facility under the requirements of WAC 173-60-050(5).

(6) Nothing in these exemptions is intended to preclude the department from requiring installation of the best available noise abatement technology consistent with economic feasibility. The establishment of any such requirement shall be subject to the provisions of the Administrative Procedure Act, chapter **34.04** RCW.

[Statutory Authority: Chapter **70.107** RCW. WSR 94-12-001 (Order 92-41), § 173-60-050, filed 5/18/94, effective 6/18/94; WSR 83-15-046 (Order DE 82-42), § 173-60-050, filed 7/19/83; Order DE 77-1, § 173-60-050, filed 6/2/77; Order 75-18, § 173-60-050, filed 8/1/75; Order 74-32, § 173-60-050, filed 4/22/75, effective 9/1/75.]

173-60-060
Nuisance regulations not prohibited.

Nothing in this chapter or the exemptions provided herein, shall be construed as preventing local government from regulating noise from any source as a nuisance. Local resolutions, ordinances, rules or regulations regulating noise on such a basis shall not be deemed inconsistent with this chapter by the department.

[Order 74-32, § 173-60-060, filed 4/22/75, effective 9/1/75.]

173-60-070
Reserved.

Reserved.

[Statutory Authority: Chapter **70.107** RCW. WSR 00-24-134 (Order 00-24), § 173-60-070, filed 12/6/00, effective 1/6/01; WSR 94-12-001 (Order 92-41), § 173-60-070, filed 5/18/94, effective 6/18/94; Order DE 77-1, § 173-60-070, filed 6/1/77; Order 74-32, § 173-60-070, filed 4/22/75, effective 9/1/75.]

173-60-080
Variances and implementation schedules.

(1) Variances may be granted to any person from any particular requirement of this chapter, if findings are made that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, enroachment [encroachment] upon an existing noise source, or because of nonavailability of feasible technology or control methods. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.

(2) An implementation schedule for achieving compliance with this chapter shall be incorporated into any variance issued.

(3) Variances shall be issued only upon application in writing and after providing such information as may be requested. No variance shall be issued for a period of more than 30 days except upon due notice to the public with opportunity to comment. Public hearings may be held, when substantial public interest is shown, at the discretion of the issuing agency.

(4) Sources of noise, subject to this chapter, upon which construction begins after the effective date hereof shall immediately comply with the requirements of this chapter, except in extraordinary circumstances where overriding considerations of public interest dictate the issuance of a variance.

[Order 74-32, § 173-60-080, filed 4/22/75, effective 9/1/75.]

173-60-090
Enforcement policy.

Noise measurement for the purposes of enforcing the provisions of WAC **173-060-040** shall be measured in dBA with a sound level meter with the point of measurement being at any point within the receiving property. Such enforcement shall be undertaken only upon receipt of a complaint made by a person who resides, owns property, or is employed in the area affected by the noise complained of, EXCEPT for parks, recreational areas, and wildlife sanctuaries. For enforcement purposes pursuant to RCW **70.107.050**, each day, defined as the 24-hour period beginning at 12:01 a.m., in which violation of the noise control regulations (chapter **173-60** WAC) occurs, shall constitute a separate violation.

[Order DE 76-5, § 173-60-090, filed 2/5/76; Order 74-32, § 173-60-090, filed 4/22/75, effective 9/1/75.]

173-60-100
Appeals.

Any person aggrieved by any decision of the department in relation to the enforcement of the maximum permissible noise levels provided for herein, the granting or denial of a variance or the approval or disapproval of a local resolution or ordinance for noise abatement and control may appeal to the pollution control hearings board pursuant to chapter **43.21B** RCW under the procedures of chapter **371-08** WAC.

[Order 74-32, § 173-60-100, filed 4/22/75, effective 9/1/75.]

173-60-110
Cooperation with local government.

(1) The department conceives the function of noise abatement and control to be primarily the role of local government and intends actively to encourage local government to adopt measures for noise abatement and control. Wherever such measures are made effective and are being actively enforced, the department does not intend to engage directly in enforcement activities.

(2) No ordinance or resolution of any local government which imposes noise control requirements differing from those adopted by the department shall be effective unless and until approved by the director. If approval is denied, the department, following submission of such local ordinance or resolution to the department, shall deliver its statement or order of

denial, designating in detail the specific provision(s) found to be objectionable and the precise grounds upon which the denial is based, and shall submit to the local government, the department's suggested modification.

(3) The department shall encourage all local governments enforcing noise ordinances pursuant to this chapter to consider noise criteria and land use planning and zoning.

[Statutory Authority: Chapter **70.107** RCW. WSR 87-06-056 (Order 86-40), § 173-60-110, filed 3/4/87; Order 74-32, § 173-60-110, filed 4/22/75, effective 9/1/75.]

173-60-120
Effective date.

This chapter shall become effective on September 1, 1975. It is the intention of the department to periodically review the provisions hereof as new information becomes available for the purpose of making amendments as appropriate.

[Order 74-32, § 173-60-120, filed 4/22/75, effective 9/1/75.]