

**Analysis in Support of a
SEPA Threshold Determination
for the
Desert Claim Wind Power Project**

February 2007

Submitted To:

**Washington Energy Facility
Site Evaluation Council**

Submitted By:





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February 12, 2007

Our Ref.: 063-1129.002

Washington Energy Facility Site Evaluation Council
925 Plum Street
Olympia, Washington 98504

Attention: Mr. Allen Fiksdal, Manager

**RE: ANALYSIS IN SUPPORT OF A SEPA THRESHOLD DETERMINATION FOR
THE DESERT CLAIM WIND POWER PROJECT**

Dear Allen:

Enclosed is Phase 1 of our analysis of the proposed Desert Claim Wind Farm Application and Final Environmental Impact Statement (FEIS). Phase 1 compares the original project, as proposed and evaluated in the Kittitas County FEIS, and denied by the Kittitas County Commissioners, to the revised project that is described in the November 2006 Application for Site Certification (ASC). The ASC was submitted to EFSEC on November 3, 2007. This phase provides analysis that the Council and State Environmental Policy Act (SEPA) Responsible Official (RO) can use to make a SEPA decision for the project. The SEPA decision is to determine if new significant adverse environmental impacts have arisen since issuance of the FEIS. A related decision is how to adopt the FEIS.

Unlike other application review efforts, this investigation did not include a Washington Administrative Code (WAC) by WAC analysis of the ASC. Rather, it focused on the current project description as described in the ASC and its potential impacts compared to the original project as described in the Kittitas County FEIS and its impacts. The goal of this review was to answer the following questions:

1. Is there new information in the ASC that indicates the existence of a probable significant adverse environmental impact? [(WAC 197-11-600 (3) (b) (ii)].
 - a. Are there any new impacts as a result of revisions to the Project that are not documented in the FEIS, and if yes, what are they?
 - b. Is there sufficient information contained in the FEIS and ASC to assess the significance of the new impacts?
 - i. If yes what is the significance, and has the Applicant proposed mitigation?
 - ii. If additional information is needed, what is it?

2. Does the level of significance of any impacts documented in the FEIS change as a result of the changes to the proposal?
 - c. If the level increases, is the proposal likely to have significant adverse environmental impacts in addition to those documented in the FEIS? [WAC 197-11-600 (3) (b) (i)].

Additional considerations included the following:

1. Does the existing County FEIS address the issues of importance to the Council in a satisfactory manner?
2. Were there issues about the project, including significant unavoidable adverse impacts, that clearly merited a denial as initially proposed, and were those issues mitigated into non-significance in the ASC?
3. Considering the initial project and its impacts as described in the FEIS, and the current impacts of the revised project as discussed in the application or elsewhere, what information should go into the SEPA threshold decision to decide whether the Council should issue a Supplemental EIS under SEPA, or issue an Addendum? And how does that information meet SEPA threshold decision criteria?
4. What is the process that the Council should follow in adopting all or part of the FEIS to meet SEPA requirements for their certification decision?

While we have made conclusions and recommendations related to the findings of this analysis, we have avoided making the SEPA decision itself, leaving that decision to the SEPA Responsible Official for the project. EFSEC may wish to include other factors dealing with their role and responsibility as a public agency in making this decision, outside of the technical areas of impact and significance. Some discussion of that option is included as well.

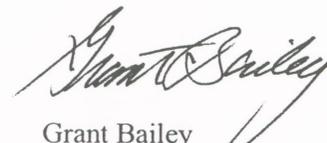
We would be pleased to support the Council in their decision, if desired, and to answer any questions. The Introduction in this report describes our approach to this analysis. An Executive Summary is also provided.

Phase 2 of our process would be to implement whatever SEPA compliance step is chosen by the Council, assist with public involvement as needed, assist with an application review if one is to be done, and any other support activities requested by EFSEC.

Sincerely,

GOLDER ASSOCIATES INC.


Judith Hillis
Project Manager


Grant Bailey
Senior Consultant

JH/GB/se



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PHASE I

**DESERT CLAIM WIND POWER PROJECT APPLICATION AND
FINAL ENVIRONMENTAL IMPACT STATEMENT**

ANALYSIS IN SUPPORT OF A SEPA THRESHOLD DETERMINATION

Submitted to:

*Washington Energy Facility Site Evaluation Council
925 Plum Street
Olympia, Washington 98504*

Submitted by:

Golder Associates Inc.

Judith Hillis
Project Manager

Grant Bailey
Senior Consultant

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EXECUTIVE SUMMARY

On November 3, 2006, EnXco Inc. (enXco) submitted an Application for Site Certification (ASC) to the Washington State Energy Facility Siting Evaluation Council (EFSEC or Council) to apply for a Site Certification Agreement (SCA) to authorize the construction and operation of a 180 MW wind power project in Kittitas County. EnXco submitted the application through their wholly-owned subsidiary, Desert Claim Wind Power LLC. The proposed project is called the Desert Claim Wind Power Project. The ASC submittal to EFSEC follows the January 2003 submittal to Kittitas County of a similar wind power project application which was denied by the Kittitas County Commissioners in April 2005. That application was the subject of a Draft State Environmental Policy Act (SEPA) Environmental Impact Statement (DEIS) and a Final EIS (FEIS) that was published on August 16, 2004.

In December 2006, Golder Associates Inc. (Golder) was retained by EFSEC to analyze relevant information and make recommendations to EFSEC on steps EFSEC should consider to satisfy its SEPA requirements, including public review responsibilities, under Washington Administrative Code (WAC) 463-60. In particular, this analysis is intended to advise EFSEC about the project and its impacts, changes to the project and their impacts, the relevance of these changes to a SEPA Threshold decision, using guidance in SEPA itself, and recommendations for a proposed SEPA process overall. The report does not make a SEPA Threshold Determination but, instead, provides findings and conclusions that the SEPA Responsible Official can consider while making that determination. The following summarizes the major findings and conclusions discussed within this report:

Major conclusions related to the goals of this review:

- New information related to potential bat and bird mortality may indicate a new probable significant adverse impact.
- New information related to visual simulation procedures may indicate a new probable significant adverse impact.
- Sufficient information was not available to determine whether significance criteria were or were not met for vegetation, habitat or cultural resources. Such information is easily acquired and we have no reason to suspect that results will be significant. The FEIS concluded there were no significant cultural resource impacts from the original project.
- The level of significance of some impacts is reduced by the latest proposal in the ASC due to reduced site footprint, tower number, lighting, wetlands impacts, and shadow flicker. Tower size has increased. Land ownership and tower locations have changed.
- The most significant impacts to some nearby viewers was reduced or eliminated by relocating and consolidating towers. High impact views, as defined in the FEIS, still remain.
- A new section at the west end of the site has not been evaluated at the same level of detail as other areas; neither has a proposed new 4,000' long transmission line corridor which was brought up for the first time in the ASC.
- EFSEC may adopt the Kittitas County FEIS for the project if, after independently reviewing the FEIS, it determines it meets EFSEC's environmental review standards and needs WAC 197-11-630(1).

Other findings are listed below:

Project Description Evolution

- The project described in the DEIS illustrated tower locations, boundaries and other specifics, but evaluated a generic tower size because the vendor and tower design had not yet been selected.
- Impacts of the generic tower size were retained in the FEIS, but the applicant selected their project before the FEIS was completed and the design was incorporated into the FEIS. It had a smaller tower size. FEIS impact conclusions incorporated the smaller tower and gave credit to the smaller size as mitigation, and documented it as the final proposal.
- The ASC now proposes a larger tower size than presented in the FEIS, as large as the biggest tower size evaluated in the DEIS, with a turbine blade that is 50 feet greater in length (22% longer) than the final choice, and 41 feet longer than any considered.
- The number of towers in the ASC is reduced from 120 in the FEIS to 90. The towers themselves are bigger.
- The site footprint is currently more contiguous and the project has been reduced to a smaller overall footprint; avoiding the need to adjust approach rules for the airport; and is further away from some residents, eliminating or reducing some view impacts.
- Land ownership now includes Washington State Department of Natural Resources (DNR) land which will increase contributions to the state budget, but will likely reduce access to state lands for hunting.
- The project now includes a new 4,000 foot transmission line ROW alternative to the nearest Bonneville Power Administration (BPA) line (230 kv). No information is provided on the location, corridor width or resources affected by that ROW.

Project Impacts

- The only significant adverse impact from the original project, as discussed in the FEIS, was a visual resource impact, primarily to residents and/or viewsheds closer in proximity to the project. . The revised project in the ASC is further away from most of these view sheds and viewers, but retains some views.
- The visual simulations in the DEIS and the FEIS were of a large tower size, regardless of the smaller project envisioned in the FEIS. These closely represent the tower size in the ASC.
- Although no new EIS has been prepared to document all impacts for certain, the existing FEIS generally addresses the impacts of the original project and the new (ASC) project. There are some exceptions. Most changes made were intended to mitigate impacts.
- Although no new EIS has been prepared, the information available to the decision-maker to make a Threshold Decision based on potential impacts and potential significance is generally as good as any other project for which a SEPA Threshold Analysis decision must be made, and better than most.
- Impact reductions since issuance of the FEIS include a smaller site footprint, fewer turbines, no effect on air operations (an issue the airport was going to fix regardless), elimination of turbines from some of the most sensitive viewpoints, establishing a more concentrated/contiguous site, increased setback from property lines and structures (for

safety reasons), operation changes to reduce shadow flicker, likely avoidance of wetlands, and reduction in day and night lighting.

- Impact increases due to changes since issuance of the FEIS include the siting of turbines on new land west of the original site that was not affected originally; longer turbine blade length from 253 to 303 feet; use of DNR land in lieu of some private lands that are not used with the smaller site configuration, and unknown impacts from a 4,000' long corridor alternative.
- Impact increases due to new information since issuance of the FEIS include a potential for overall increase in viewshed impacts if a 50-55mm lens is used rather than a 35 mm lens, as was apparently used for the visual simulations; a significant potential increase in raptor strikes and bird and bat mortality from the turbine blades, based on new procedures and assumptions in forecasting blade mortalities in the industry.
- Vegetation impacts from the revised project are reduced during construction and during operation. The site of a 200 acre habitat mitigation property, however, has not been identified.

Potential New Significant Adverse Impacts

- A final cultural resources report and assessment for the newer properties was not available at the time of this SEPA Threshold Analysis and the possibility exists that significant impacts might occur on the new site unless confirmed otherwise. Cultural resource impacts from the original project were not significant.
- If it is correct that a 35mm lens was used as the basis for the visual resource assessment computer simulations, as implied in the FEIS, then the visual simulation photographs in the FEIS understate the size of the turbines, and the potential visual impact, shown in all the photo simulations. It is unknown whether corrected simulations would result in new significant adverse impacts, or whether reduced impacts from tower relocation would become significant again due to the larger size shown by 50mm lenses. New photos would be required to determine this.
- Raptor fatalities predicted for the facilities have increased from the 3-4 fatalities per year presented in the FEIS to up to 27 fatalities per year presented for the proposal in the ASC, based on new correlation information. The potential 27 raptor fatalities is greater than the number of active raptor nests observed in the 52 square mile study area investigations for this project, and greater than the number of young observed, yet no population level consequences were predicted. Increased mortalities are also projected for bats.
- Siting the facility in conflict with local land use regulations may be a new significant adverse impact, if such conflict exists, depending on interpretation of EFSEC's Laws and Rules, and if the RO concludes that this is a significant impact not discussed in the FEIS
- Potential increased and projected cumulative impact of bird kills from the Kittitas Valley, Wild Horse and Desert Claim Wind Farm projects combined may be a new significant adverse impact.

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1.0 INTRODUCTION

1.1 Background

On November 3, 2006, enXco submitted an Application for Site Certification (ASC) to EFSEC to apply for a Site Certification Agreement (SCA) to authorize the construction and operation of a 180 MW wind power project in Kittitas County. EnXco submitted the application through their wholly-owned subsidiary, Desert Claim Wind Power LLC. The proposed project is called the Desert Claim Wind Power Project. The project (Figure 1) would be located 8 miles northwest of Ellensburg and 13 miles east of Cle Elum on 4,783 acres in Kittitas County. The project includes 90 wind turbines, access roads, a 2 acre substation, and related infrastructure needed to connect to the regional transmission grid. No specific customers for the power have been announced to date.

The ASC submittal to EFSEC follows the January 2003 submittal to Kittitas County of a similar wind farm application which was denied by the Kittitas County Commissioners in April 2005. That application was the subject of a Draft State Environmental Policy Act (SEPA) Environmental Impact Statement (DEIS) and a Final EIS (FEIS) that was published on August 16, 2004. The DEIS evaluated the larger of the available turbine sizes available to the applicant at that time. For the FEIS, the applicant selected a final design and turbine size and the FEIS used that size in the final impacts and mitigation discussion and conclusions, while keeping the original size in the analyses. The applicant now proposes a new turbine size that is larger than the final one selected for the FEIS – and slightly larger than the biggest ones used in the DEIS analysis.

Since the April 2005 denial of the application to the County, enXco has made additional changes to the project and has reformatted their application to meet EFSEC Guidelines. Washington State regulations (WAC 463) allow wind farms to seek license approval by EFSEC for renewable projects, including wind farm applicants who wish to voluntarily go through the EFSEC siting process. One aspect of such siting is that EFSEC has sole permitting authority for such projects and, if the project is found to be in the public interest, EFSEC can preempt local land use and all other zoning or other local government decisions and proceed to license the project via a recommendation to the Governor. In the case of the Desert Claim Wind Power Project, EFSEC will likely be asked to preempt the County's land use and zoning requirements for this project, and issue a SCA. That request has not been made, to date. EFSEC's recommendation to approve or deny goes to the Governor who will make the final decision.

1.2 Purpose

The purpose of this report, *Desert Claim Wind Power Project Application and Final Environmental Impact Statement Recommendation for SEPA Threshold Determination*, is to provide information and advice to EFSEC and its SEPA Responsible Official about the possible approaches that are available to achieve SEPA compliance related to the review of the ASC and EFSEC's decision on this project. After consideration of this report, EFSEC will make its own decision on the appropriate SEPA process to follow while processing the application. EFSEC will also follow their siting process as required for all energy facility application that comes before the Council, such as public meetings, land use hearings, contested case hearings, and other analysis and public input as desired. EFSEC has asked Golder to make a recommendation on an appropriate SEPA compliance process to support this portion of the siting process.

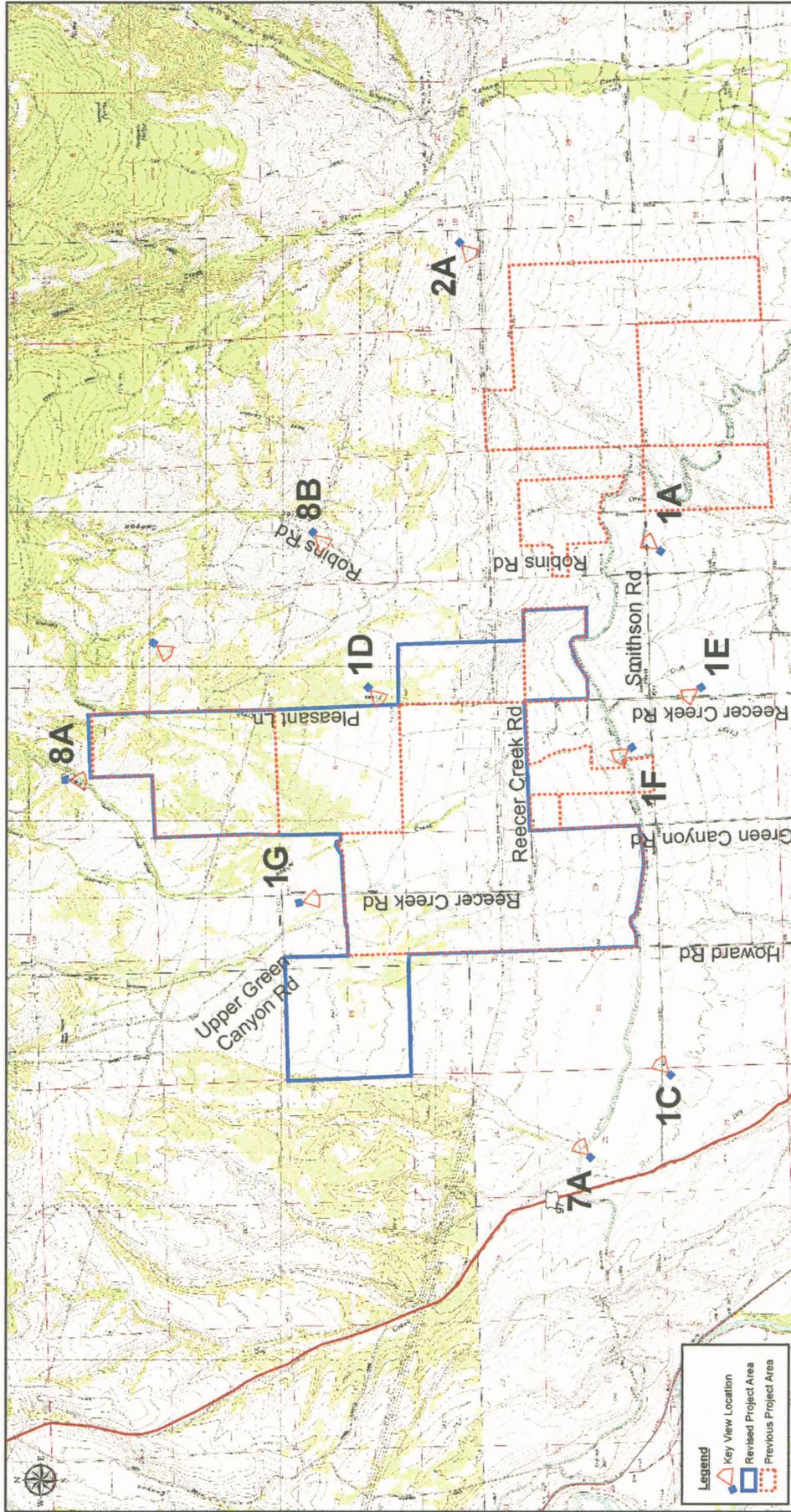


Figure 13

SIMULATION LOCATIONS AND DIRECTIONS

DESERT CLAIM WIND POWER

Date: 10/2/2008
 GIS Analyst: avh
 Map Source Information:

Kittitas County, Washington

Legend

- Key View Location
- Revised Project Area
- Previous Project Area

Desert Claim Wind Power
 Kittitas County, Washington

FIGURE 1
ASC AND FEIS PROJECT BOUNDARIES
 EFSEC/DESERT CLAIM WIND POWER/WA

This analysis evaluates the project in its present context, taking into account that the following activities have occurred and must be considered in the analysis. These conditions have not existed in previous applications before the Council and their existence may influence the SEPA process that EFSEC decides to follow:

- A DEIS and FEIS already existed for the project (or a very similar one) before an ASC was submitted to EFSEC. This is the first time a new applicant has applied to the Council with a completed FEIS addressing a project that is essentially the same as the one proposed to the Council (i.e. same technology, of similar size [i.e. not an expansion], at similar location by an identical applicant).
- The project has already been denied. This is the first time an applicant has applied to the Council for a project after being denied a permit by local government for that, or a very similar, project. The denial was sustained in a court appeal.
- The project is revised. This is the first time a revised project has been submitted to the Council after receiving public review about an original project in a different licensing venue (Kittitas County government) and revising it.

EFSEC is now charged with taking over siting jurisdiction of a project that has already received public review and agency denial. In doing so, EFSEC will make its own independent evaluation of both the project and the analysis of the project prepared by others. EFSEC must evaluate the project, and evaluate changes to the project made by the applicant, based on public comment. EFSEC must, among other decisions, decide if the new project creates any new significant adverse impacts. This report has been prepared to assist EFSEC in that analysis of related historical information.

There are two primary issues here that are being evaluated to support EFSEC's SEPA decision.

SEPA Threshold of Significance: One issue is whether or not the existing SEPA status of the revised project is acceptable and adequate to support a decision (i.e. the completed FEIS is acceptable for the current project) or, alternatively, if changes and other activities related to the project would support the need for a Supplemental EIS (SEIS). If a SEIS is needed, it would be prepared by EFSEC and issued as a Draft and Final, including public review, comments, and responses. This report analyzes significance under SEPA to determine if the "Threshold for Significance" potentially requiring a SEIS has been met or exceeded for this project.

FEIS Adoption: The other issue is whether or not to adopt the EIS as-is, in support of EFSEC's decision, or to revise it in one of two ways, to create EFSEC's own SEPA document to support their decision. If a SEIS is prepared, based on significance, EFSEC would adopt the rest of the FEIS as part of their SEPA compliance and decision process. EFSEC may or may not be satisfied with the content of the existing FEIS for its purposes related to the revised project, and may wish to issue its own analysis or conclusions on some topics even without significance determination. This is more of a subjective decision. We have pointed out possible issues with the current FEIS that EFSEC may wish to address. EFSEC will decide whether the FEIS can still be adopted as-is, or whether it needs revision. The options for the revision process are discussed herein, and include an Addendum or a SEIS.

Outcomes of this approach would likely evolve as follows:

1. EFSEC would adopt all or part of the existing FEIS to meet part of their SEPA requirements in support of their decision.

2. EFSEC would issue an Addendum or a SEIS under SEPA to address issues of content in the existing FEIS; or because a significance threshold criteria was exceeded by the impacts of the new proposed project or new information, compared to the existing FEIS, or;
3. EFSEC would not issue a SEIS for either reason and would proceed with the licensing process and decision. In this case, an Addendum would likely still be issued by EFSEC to explain the current status of the project, changes in the project and its impacts and mitigation proposed since the FEIS, and other information. The Addendum would contain no significant environmental analysis. (Some analysis is allowed under SEPA.)

This report addresses the following questions:

1. Is there new information in the ASC that indicates the existence of a probable significant adverse environmental impact? [WAC 197-11-600 (3) (b) (ii)].
2. Are there any new impacts from the project in the ASC, as a result of revisions to the original project that are not documented in the FEIS?
3. Is there sufficient information contained in the FEIS and/or the ASC to assess the significance of the new impacts?
 - a. If yes what is the significance, and has the applicant proposed mitigation?
 - b. If additional information is needed, what is it?
4. Does the level of significance of any impacts documented in the FEIS change as a result of the changes to the proposal?
5. Do any such changes include new probable significant adverse impacts that are not documented in the FEIS? [WAC 197-11-600 (3) (b) (i)].

1.3 Scope

Golder was retained by EFSEC to analyze relevant information and make recommendations to EFSEC on steps EFSEC should consider to satisfy its SEPA requirements, including public review responsibilities, under WAC 463-60. In particular, this analysis is intended to advise EFSEC about the project and its impacts, changes to the project and their impacts, the relevance of these changes to a SEPA Threshold decision, using guidance in SEPA itself, and recommendations for a proposed SEPA process overall. The scope of this effort was to review the most important sections of the FEIS – those that dealt with the major issues with this project, and that resulted in additional mitigation by the applicant; to review the major aspects of the ASC; and to determine the most appropriate SEPA compliance process for EFSEC to follow, given this new information and threshold and significance criteria under SEPA.

This report does not review the adequacy of the application under EFSEC Siting Guidelines (WAC 463-60) or have any direct bearing on the contested case hearing. This report does not analyze the merits of the recommendation of the Kittitas County Planning Commission recommendation of February 13th, 2006, or the County Commissioners decision to deny the project. This report does not review the responses made to the DEIS comments for adequacy or responsiveness, that can be found in the FEIS. No field investigations or analyses were conducted as part of this analysis.

Appendix A to this report summarizes the applicable threshold and significance criteria used for this report, including comments as to how it was applied. Appendix B summarizes significance criteria under SEPA.

1.4 Approach

Our approach was to examine relevant findings and analysis potentially related to EFSEC's future independent decision on the project, and to compare relevant information that might be important to the future decision. This included the following activities:

- Review of the FEIS prepared for the project, including the project description as of January 2003.
- Compare the significant aspects and features of the project, as originally proposed, to the project as proposed in November, 2006 in the ASC.
- Compare the significant impacts disclosed in the FEIS to the potential impacts of the project as it is configured today, to see if new significant adverse impacts have arisen, as best as can be determined without a new EIS on the revised project.
- Consider public comments received in the public meeting held in Ellensburg on December 13th, 2006.

After reviewing and comparing this documentation, we reviewed the guidance under SEPA relating to adoption of other SEPA documents and relating to the need for supplemental EISs and/or Addenda, depending on circumstances. This review was to determine whether conditions or project changes suggested the need for a SEIS under SEPA, or whether the Council could adopt the original EIS and proceed with their deliberations. This could be done with or without, issuing an Addendum under SEPA. Our approach also addresses whether there were project components or other factors such as new information that might trigger the desire for a new SEIS, even if not triggered by significant impacts from changes between the original project and the current one, as proposed.

For example, there may be reasons beside significance for EFSEC to consider preparing a SEIS, such as having their own SEPA document issued for public review, correcting text in the FEIS document, and/or for their own future decision. This would be a policy choice for EFSEC; this report does not make a recommendation on this, but it does evaluate the regulatory option for such a decision, and its potential benefits.

As part of this approach, we have made our own interpretations of SEPA guidance where explicit requirements are not provided. EFSEC may wish to have their attorney review these recommendations and options before proceeding with a decision.

1.5 Contents and Organization of This Report

Where appropriate, relevant information used to support the analysis, and to make recommendations, has been provided in this report, including citations of WAC guidance and explanations of criteria under SEPA for various choices. As such, the Responsible Official will have access to the relevant criteria and can make his/her own decision or recommendation, based on the facts presented and the guidance cited. Appendix A to this report includes a discussion of the definitions of a SEIS under SEPA, an Addendum, the adoption process, and a discussion of options under these choices. Appendix B provides a summary of significance criteria, under SEPA. Appendix C includes a recommended SEPA EIS Adoption Process.

The report is organized into sections intended to get the reader up to date with the progression of the project as it evolved through the permitting process from Kittitas County to EFSEC, and a discussion of its impacts. We have included a discussion of new impacts that might trigger the need for a SEIS,

depending on the determination of the Responsible Official. We have compared the impacts of the project in the DEIS with apparent impacts of the revised project in the ASC. Also we have made findings and conclusions related to potential significance. Finally, we included a discussion and evaluation of selected topics from the FEIS for EFSEC to consider before adopting that EIS, and a related SEPA evaluation of EFSEC's option to consider a SEIS, even if obvious and new likely significant adverse impacts are not identified.

2.0 PROJECT DESCRIPTION

2.1 Introduction

This section describes the proposed action presented in the ASC and the history of project changes evaluated in the Kittitas County Draft and FEIS. To determine whether the current project in the ASC has “changed significantly” in terms of impacts, between the FEIS and today, it is necessary to explain the status of the wind farm project description, and how it has changed over time during the EIS and ASC processes. There is more to consider than one project for which a FEIS was prepared, and a revised and mitigated project used as the basis for an ASC submitted to EFSEC. The discussion below includes the evolution of project size and other project aspect changes over the life of the EIS process. This information relates to the definition of revised project for purposes of a SEPA Threshold Analysis, and to EFSEC’s future decision regarding the information it believes it should provide to reviewers, and in what manner. One result of this evolution is that the public did not have an opportunity to comment on the changed project as described in the FEIS, nor the additionally changed project in the ASC. EFSEC can decide whether it wants to address this fact.

2.2 Project Description and its Changes

Desert Claim Wind Power LLC, a division of enXco, (the applicant) submitted an application for a wind power project (wind farm) to be built on various parcels in Kittitas County in January 2003. That application left open some of the details of size of the wind turbines themselves. Size is an important factor here because most of the concerns about the proposal, and reasons for denying it, were based on scale, visual effects on land use, and aesthetics of the structures. The MW size is important as well because it serves as the basis for estimation of bird and wildlife impacts. As the environmental process continued from the DEIS through the FEIS and into the ASC, so did the applicant’s decision process for the project and the selection process for the size and number of turbines proposed.

The DEIS looked at a number of potential turbine sizes and selected one of the larger options as an example for purposes of the analysis. In particular, the larger wind turbine alternative options available were used for the visual resource analysis and other analyses in the DEIS. The DEIS assumed a turbine with a maximum tower height of 262 feet (80 meters). Tower height is generally given as the height from the ground to the center of the nacelle/rotor, the turbine structure at the top of the tower, and at the center of the blade hub of the tower. In addition, the DEIS assumed that the blades themselves would have a diameter that was also 262 feet (80 meters) so that the combined maximum height of the structure, including tower and that portion of the blade over the top of the tower, would be 120 meters (393 feet). Thus the DEIS analyzed the impacts of a 262 foot (80M) high tower with a maximum height of the combined structure of 393 feet (120M).

The number of towers proposed for the project at the time the DEIS was published was 120 towers, each generating 1.5MW of electricity for a total output capacity of 180MW. This was retained in the FEIS. The project area set aside for this project totaled 5,237 acres, comprised of numerous parcels, some of which were not contiguous.

The DEIS project included a 1,000 foot setback from residences and a 250-foot setback from any project boundary (project property line) or road, property line, transmission line or the KRD canal. The dwelling proximity setback is not stated in the ASC, although the nearest existing home was just over that distance from a proposed turbine.

When the FEIS was published (and this is the document EFSEC would adopt) the applicant had completed their decision process on their preferred turbine and made other changes as well – some in response to DEIS comments. The new turbine decisions by the applicant were made in time to include them in the FEIS. The preferred turbine described in the FEIS, the one decided upon by the applicant, was smaller than the largest turbine considered in the DEIS and smaller than the one used for the visual resource analysis and for other analyses in the DEIS. Instead of just mentioning that the applicant had selected a final turbine design, the FEIS incorporated that design into the project description figures shown in Chapter 2, and referred to the smaller project turbine as the final proposed project and as mitigation for the impacts of the larger one originally proposed. The proposed wind turbine for the FEIS was then a 213 foot (65M) tower with a 253 foot (77M) diameter blade, comprising a maximum combined height of 340 feet (103.5M). This project was assumed as the one to be developed on the site when the FEIS was published.

The larger turbine size from the DEIS was still the basis of the impact analyses in the FEIS, except that the FEIS referred to the smaller project proposed by the applicant as mitigation to the project evaluated in the DEIS.

P 3-213 “The ...turbine model currently proposed by Desert Claim...will provide some level of visual mitigation...”

P 2-14 “(The applicant’s proposal) is actually smaller than the turbine analyzed in the DEIS...”

Although there is no formal comment/response opportunity for a FEIS, the reader’s final impression of the project, and its impacts, and any future action taken, or not taken, by a reviewer, would have been based on the 340-foot turbine (103.5M) project.

The FEIS also incorporated different setbacks proposed by the applicant – keeping the 1,000 foot setback from residences but expanding the other setback from 250 to 487 feet. This incorporated new risk analysis and avoided ice throw and blade throw risk, both tied to blade length. This safety setback was established for the applicant’s FEIS – sized tower; a smaller tower than the worst case tower used for other analyses in the DEIS. It would not be sufficient (for calculated ice or blade throw limits) if a bigger tower were proposed.

The project in the ASC has been revised since the FEIS and is a different project again. While it is similar to the “worst case” turbine design evaluated in the DEIS, it is bigger than the turbine design that was evaluated, finally selected in the FEIS, and denied by the County.

The project has since been changed in many areas; some as a result of mitigation decisions, others as a result of project decision evolution over time by the applicant. It is still a wind farm with towers approximately the same size as those discussed in the EIS documents at approximately the same locations. Some of the most important changes involve the new number of turbines, reduced site size, site consolidation, and setbacks. Some aspects of the current project are summarized here. All the versions are compared in detail within this report.

Another change has occurred as a result of the selection of a substation site. There were two sites in the FEIS, each within 300 feet of a power line. The ASC has one substation, still 300 feet from one power line, but 4,000 feet from the alternative (BPA 230kV) line. This means that the project now has a new 4,000’ long power line corridor. No information has been provided on the corridor.

Figure 1 shows the proposed property boundary from the ASC and compares those boundaries with the boundaries shown in the FEIS. Viewshed sites are also shown in the figure. The major changes in this revision include a reduction in total acreage, consolidation of property lines resulting in a more contiguous site, a change in the number of towers, use of DNR land for some of the project, and changes in setbacks due to larger towers.

Table 1 lists the turbine options and sizes put before the public as the project evolved through the DEIS, FEIS and ASC process. The turbine currently proposed is similar to and slightly larger than the big turbine evaluated in the DEIS and used in the visual analysis. It is 21 feet higher and the blades are 41 feet longer than the largest turbine evaluated. The current turbine is considerably bigger than the turbine size upon which conclusions were based and described in the FEIS. It is 50 feet taller (including the blade) and has a blade length 50 feet longer (and wider, of course). This is important because SEPA significance can be addressed satisfactorily if an alternative is discussed in an EIS, regardless of what is proposed, and the final project size change (compared to the DEIS) may not be major compared to that alternative. EFSEC, however, may wish to base their decision for future public review on the larger difference between the two latest versions.

TABLE 1

Wind Turbine Options Comparison of Largest Turbine listed in
EIS Analysis vs. Turbine Selected in FEIS vs. Proposed Turbine

Tower Parameter	Largest Turbine in DEIS	Selected Turbine For DEIS Analysis	Turbine Selected in FEIS	Proposed Turbine 11/06 ASC
Power output (MW)	2.0	2.0	1.5	2.0
Turbine Height	262'(80m)	262'(80m)	212'(65M)	262.5(80m)
Blade Diameter (max)	262'(80m)	262'(80m)'	253'(77m)	303'(92.5m)
Total Maximum Height		393'(120m)	340'(103.5m)	414'(126m)
Total Turbines	120	120	120	90
Substations		1 or more 2 acres each + 2 acre support facility	2 substation options	1 2 acres
Roads		23 miles	27.5 miles	22 miles

There were 32 residences within 1000' of the project boundary. Now there are 36 (i.e. essentially no change).

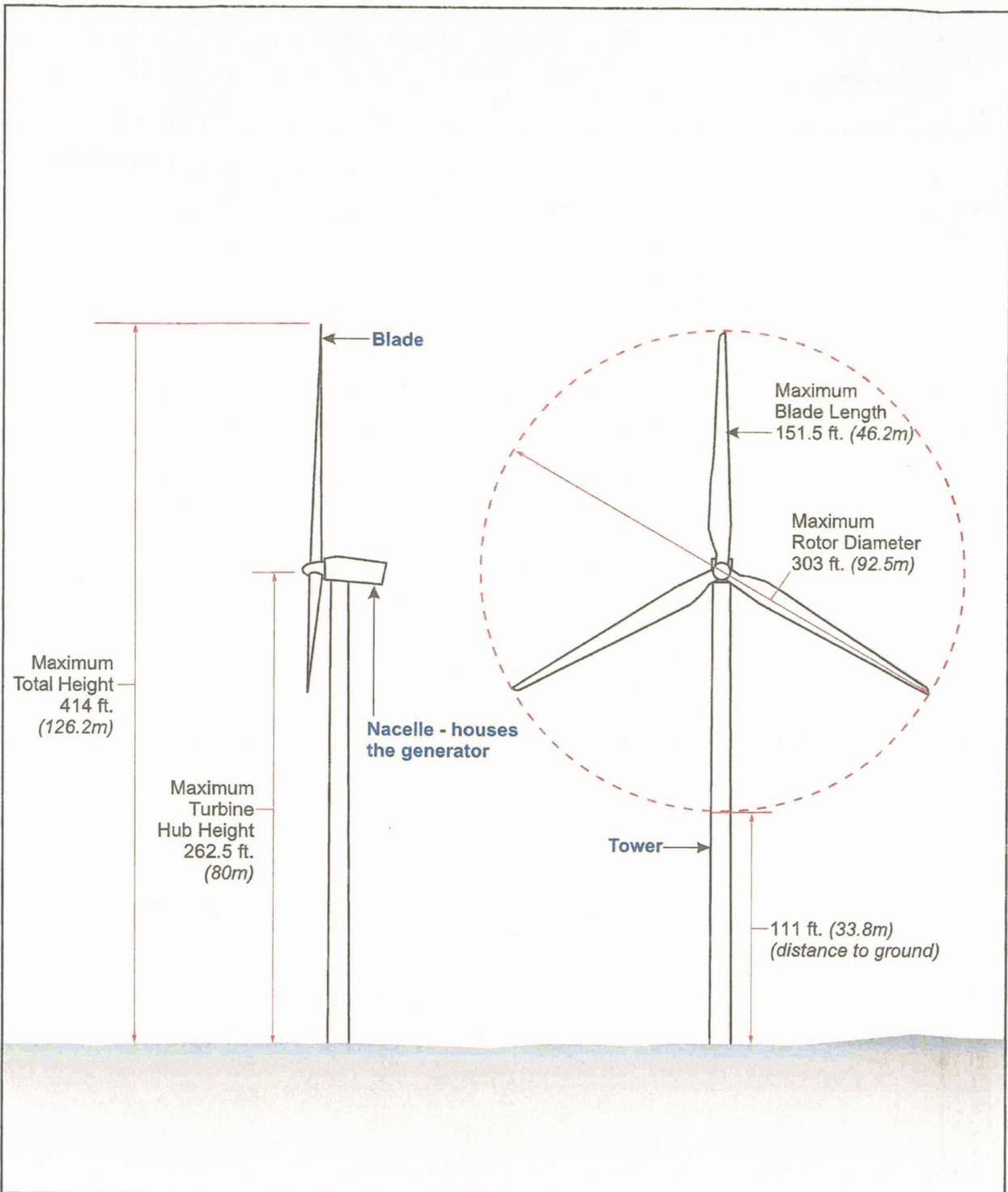
The project submitted to EFSEC in the November 2006 ASC has an overall site footprint reduced from the FEIS version by 454 acres to 4,783 acres. The number of towers has been reduced from 120 to 90. The size of the turbines has been increased from a 1.5MW to a 2.0MW electrical output, which maintains the original electrical output of the project at 180MW. The increased power output of the turbines was achieved by selecting a turbine size that is bigger than that proposed in the FEIS. The current turbine is comprised of a 262.5-foot (80M) tower (essentially the same size as the worst case evaluated in the DEIS; and a 303-foot (92.5M) rotor diameter resulting in a combined maximum height of 414 feet (126.2M) about 21 feet (6.5M) or 5% higher than the worst case analysis. It is 22% higher than the applicant's project discussed in the FEIS as the proposed action. It was this smaller project upon which the decision for denial was based. Figures 2 and 3 show the sizes (not to scale) of the turbine shown in the FEIS and the turbine proposed in the ASC. A separate figure comparing these turbines to scale would be useful.

Setbacks have been revised in response to the longer blades which, based on the risk analysis, affect the distance that ice or blades can be thrown. Setbacks from the project boundary are now 625 feet, including setbacks from roads and transmission corridors.

Other changes include a minor difference of 36 residents within 1000 feet of the project boundaries now, according to the ASC, compared to 32 in the FEIS.

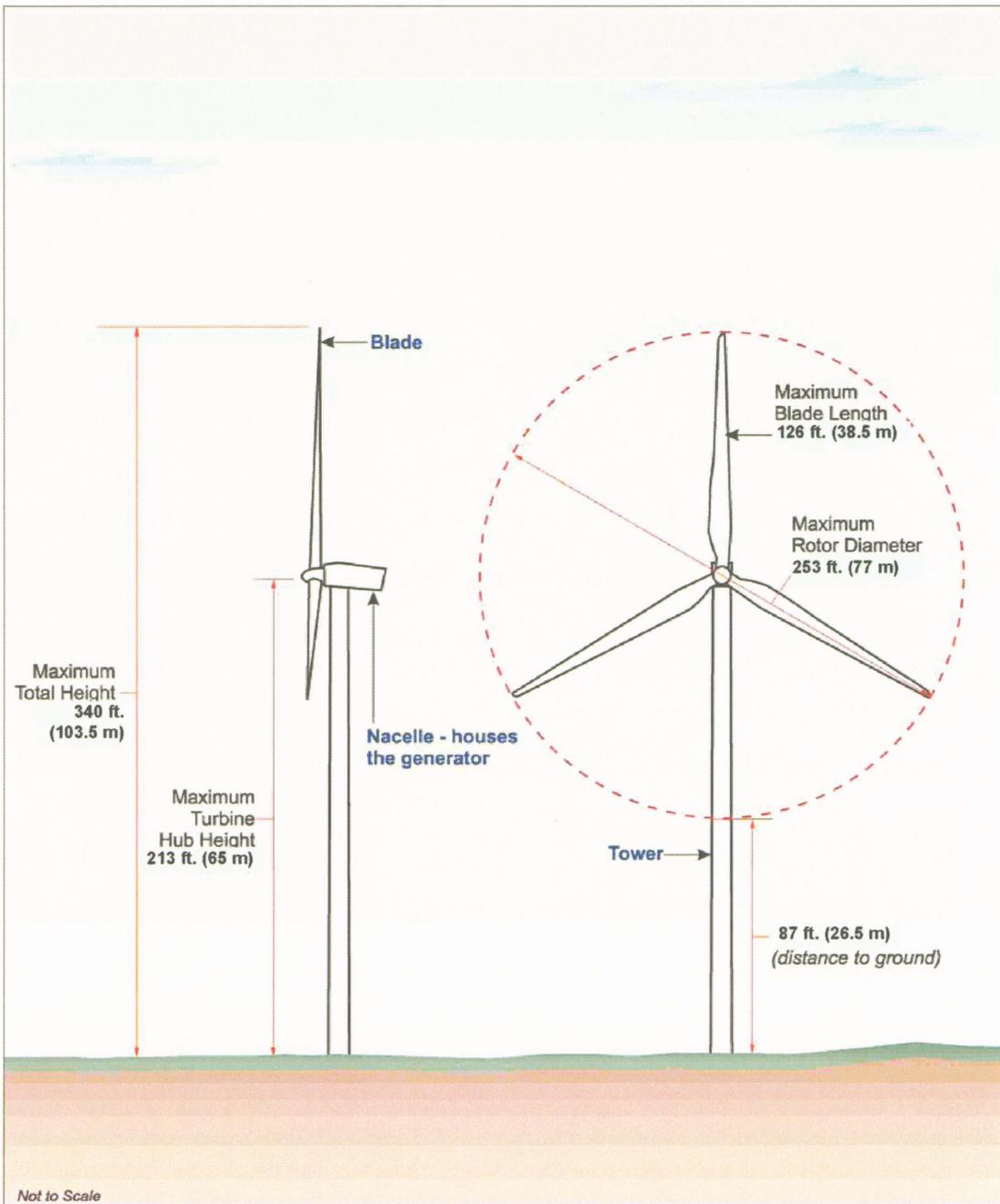
Table 2 compares more factors among the project as it evolved from the DEIS to the FEIS and the ASC.

Public Interest Factors – There are some additional changes related to the project that may have a bearing on the siting decision but that are beyond the scope of the analysis in this report. Therefore, their significance and affects are not considered. An initiative passed the ballot in Washington in November, 2006 that sets a minimum requirement for renewable resources such as wind in the portfolio of major utilities in Washington State. Other states have similar provisions which will increase the demand for energy from wind farms and reflects support among voters for more renewable energy resource development. Also, the project now includes more DNR land, which will result in some lease revenues going to the state budget (possibly schools in Washington) for these properties, instead of to private property owners.



Not to Scale	DESERT CLAIM WIND POWER	Figure 6 DIAGRAM OF PROPOSED WIND TURBINE	
 Desert Claim Wind Power Kittitas County, Washington		Kittitas County, Washington	Date: 10/19/2006
		Map Source Information:	

FIGURE 2
ASC WIND TURBINE
EFSEC/DESERT CLAIM WIND POWER/WA



Source: Desert Claim LLC, 2003



**Kittitas County
Desert Claim Wind Power
Project EIS**

**Figure 2-5
Diagram of Proposed Wind
Turbine**

FIGURE 3
FINAL EIS WIND TURBINE
EFSEC/DESERT CLAIM WIND POWER/WA

TABLE 2

Project Comparison of Significant Changes between FEIS and ASC

Project Component/Resource	DEIS Analysis (as referenced in FEIS)	FEIS Analysis (Modifications Generally Additional Mitigation Measures)	ASC
Project Acreage	5,237 acres	5,237 acres Four separate parcels	4,783 acres Contiguous
Land Ownership	8 Landowners (private)	8 Landowners (private)	5 Landowners (Private; 3,191) WDNR (Leased; 1,592)
Project Footprint		90.4 acres	73.8 acres
Total Turbines (height)	120 (393 ft.)	120 (340 ft.)	90 (414 ft.)
Foundation		8 ft. deep by 42-ft. diameter (inverted-T)	8 ft. deep by 90-ft. diameter (inverted-T)
Substations		1 or more 2 acres each + 2 acre support facility	1 2.8 acres of temporary impact
Roads	23 miles	27.5 miles	22 miles
Collection: Underground cable	25 lineal miles	31 lineal miles	24 lineal miles; may be encased in concrete
Collection: Overhead cable	7.5 lineal miles	1 lineal mile;	1.5 lineal miles;
Transmission Connection		230kV on 70 to 100-ft poles 300-foot connection to BPA	230kV on 76-ft poles; 4,000-foot connection to BPA
Proximate Residences		32 within 1,000 ft of project boundary	36 nearby residents; 7 < 1,500 ft. from a turbine
Project Safety Setback	250 feet	487 feet	625 feet
Resident Setback	1,000	1,000	1,057
Met Towers		5	4
Earth		5 turbines within Zone 1 (high landslide hazard) 6 turbines within Zone 2 125 foot setback from zone 1 and 50 feet from zone 2	No data on soil conditions for WDNR land. 125 foot setback from zone 1 and 50 feet from zone 2; construction may still occur in these zones
Water		Temp impacts to 16 stream segments (3700	Stream crossing structures incorporated

TABLE 2

Project Comparison of Significant Changes between FEIS and ASC

Project Component/Resource	DEIS Analysis (as referenced in FEIS)	FEIS Analysis (Modifications Generally Additional Mitigation Measures)	ASC
		linear feet in 3 acres of riparian area [Type 3, 4 or 5] Perm impacts to 1200 linear feet and less than 1 acre of riparian area Turbine oil: 80 gallons	into road system 100 foot setback from drainages Micro-sited (up to 300-foot relocation); Turbine oil: not specified
Vegetation		88 acres permanent impact 342 acres temporary impact Grassland/lithosol 30.4 acres	76.5 acres permanent; 280.5 acres temporary (plus O&M and staging areas [5 acres additional impact]) Grassland/lithosol, 42.8 acres permanent impact Pine forest, new 1 acre permanent impact No rare plant surveys have been conducted in new project areas. TAC and 200-acre habitat mitigation parcel; Noxious weed plan no longer stated as in consultation with KCNWCB.
Wetlands		17 acres temporary impact 3.2 acres permanent impact	0.3 acre open water permanent impact; 0.2 acres of wet meadow permanent impact
Avian		Raptor mortality: 3 to 4 per year Passerine mortality: 140 to 220 per year	Raptor mortality: 27 per year Passerine mortality: 100 to 500 per year Cumulative mortality

TABLE 2

Project Comparison of Significant Changes between FEIS and ASC

Project Component/Resource	DEIS Analysis (as referenced in FEIS)	FEIS Analysis (Modifications Generally Additional Mitigation Measures)	ASC
			non known.
Other Wildlife		Bat mortality: Expected to be similar to bird mortality; not quantified	Bat mortality: 180 to 540 bats per year
Cultural		5 identified resources with direct impact	100-ft buffer; Data not available for new parcels
Land Use		Long-term conversion of 82 acres from agriculture/range to energy production	Ag conversion not identified.
Health and Safety		Shadow flicker: distance threshold is 2,000 feet; 65 receptors could be exposed	Shadow flicker: distance threshold considered to be 1,500 feet; number of receptors unknown; Blades shut down when necessary.
Noise		8 receptors considered "moderate" impact (50 to 59 dBA with potential increases of 5 to 10 dBA)	Noise levels reduced to 50dBA at project boundary
Visual		<p>Of 19 key views: 4 determined "high" impact [1A, 1E, 1F, and 1G]; 6 are rated "moderate" [1 to 4 miles]; 9 views "low"</p> <p>Light and glare: 48 turbines with dual lighting systems, flashing day (white) night (red)</p> <p>Partially visible from I-90 at Thorp (Scenic Byway); visible from scenic highways SR 97 and Highway 10.</p>	<p>No visual simulations provided for WDNR land, or parcel connecting northernmost section with the rest of the project; impact ratings have not been revised for viewpoints 1G, 7A, 1D, and 8B</p> <p>No assessment of possible 4,000 ft. power line.</p> <p>Light and glare: 36 turbines with red night lighting (day white strobe eliminated)</p>

TABLE 2

Project Comparison of Significant Changes between FEIS and ASC

Project Component/Resource	DEIS Analysis (as referenced in FEIS)	FEIS Analysis (Modifications Generally Additional Mitigation Measures)	ASC
			Visual impact from scenic routes not provided for view shed having WDNR land.
Ground transportation		Tower sections transported would be 65 to 75 feet long	Tower sections transported would be 70 to 90 feet long; traffic plan no longer specified as a cooperative effort with the County, WSDOT, or state patrol
Air transportation		10 turbines exceed maximum allowable structure height and considered a hazard	Moved from hazard area. Determination of non-hazard certificates required for all turbines

3.0 POTENTIAL SIGNIFICANT ADVERSE IMPACTS

Table 3 includes a brief summary some of the conclusions made in the FEIS regarding potential significant adverse environmental impacts and compares those impacts with project changes presented in the ASC. Comments about the changes are included. The purpose of this table is to summarize potential new significant adverse environmental impacts in all elements of the environment that may have arisen since issuance of the FEIS. Such impacts, under SEPA and as explained below, could come from project changes creating new impacts, or from new information identifying new impacts.

The first column shows that very few significant environmental adverse impacts were identified in the FEIS. Again, this focus is on FEIS conclusions as they relate to a SEPA threshold decision for a SEIS. It does not review or consider findings within the Kittitas County decision to deny the application, or the criteria or rationale used by the County to deny it. It does not provide a separate conclusion on the validity of the FEIS and its conclusions.

The only significant unavoidable adverse impacts identified in the FEIS were due to visual impacts of the turbines from various viewpoints. Other impacts were noted in the EIS, and visual impacts were mentioned in Land Use as "significantly larger" than other uses, but none were listed as significant adverse impacts, and even the land use section concluded that "Effects on overall land use patterns in the project area would not be significant". The project has reduced some visual impacts by reducing the project footprint, the number of towers, and increasing setbacks; however, remaining towers would also present an increase in visual impacts due to their larger tower size, and from 50mm visual simulations instead of the 35mm lens used in the photos.

In our opinion, no new significant adverse impacts have obviously been created by changes to the project where adequate data was made available to make a conclusion. There are some areas where a conclusion cannot be made without additional information. Most changes have been proposed as mitigation for the impacts raised, both in and after completing, the FEIS. It is uncertain whether new lands involved in the new site layout would have new significant impacts, although there is no indication that they would. Unknowns at the new sites at this date that might change this conclusion include cultural resources, habitat surveys, population studies, and viewshed analysis of a new section.

However, more significant adverse environmental impacts may have arisen due to new information developed since the FEIS was issued as described in this review. These are listed in the fourth column of this table and explained in the associated rows. They are discussed here.

3.1 Wildlife

The wildlife section in the ASC, in combination with conclusions in the EIS, describes new potential wildlife impacts here, both from this project and from cumulative impacts from all three projects. New protocols adopted by biologists and wind farm analysts were applied to passerine and raptor birds in the ASC. The new numbers used in the application increase the estimated mortality of passerines by a large amount from a maximum of 220 birds in the FEIS to 500 in the application. This translates to a similar large increase in the cumulative impacts of all three wind farms because all three were apparently understated in previous analysis.

Similarly, because a conclusion was made that bat mortalities would be similar to bird mortalities, projected bat mortalities from the project have increased as well.

The potential raptor mortality projections are significantly increased. The FEIS concluded that 3-4 raptors might be killed per year, based on MW output of other projects and raptor densities observed. This has been revised in the application to a maximum of 27 per year. A 500-600% increase in potential mortality from the FEIS to the ASC is, in our opinion, a significant increase. The applicant's consultant concludes that this is not a significant impact and would not result in population level consequences within the Kittitas Valley, but did not make such conclusions on impacts within the study area, encompassing the project site plus a one mile buffer. We could not find population data for raptors other than 0.31 nests per square mile in the 52 square mile study area (FEIS p.3-91). Thus, the 27 annual mortalities compares to 16 nests in the area.

When applied to all three projects in the cumulative analysis, the annual projected raptor mortality increases to dozens of birds per year. We have not seen an evaluation of the potential significance of this new number. More significantly, perhaps, no one has quantified the actual raptor populations in the study area (other than nest sites) to be able to determine whether the increased mortality will affect such populations, or potentially affect them significantly. The applicant's consultant has concluded that the new impacts are not significant within Kittitas Valley. SEPA criteria for significance includes "new significant impacts" and "uncertainty". Either may apply here under the "new information" category. (See Appendix A).

TABLE 3

Status of Significant Adverse Impacts
 Kittitas County FEIS Compared to ASC and New Information

Discipline	FEIS Significance Conclusions	Relevance of Project Changes or New Information	Comments on Change	New Significant Adverse Impacts?
Earth	Insignificant Increase in soil loss if mitigation followed	Little or none. Concern about soil erosion in a flat farming area seems exaggerated	Smaller site leading to shorter roads would reduce impact.	NO
Air	Insignificant	None		NO
Water	Insignificant to surface and groundwater	Impacts reduced	Waterways and wetlands are now avoided or crossed overhead (this assumes wetlands in new 4000' corridor are avoided)	NO -as long as corridor wetlands are avoided
Plants	None to vegetation or rare plants	Vegetation loss reduced Rare plants surveys not conducted in new areas	Smaller footprint reduces impact New areas likely to be similar	NO
Wetlands	None to wetlands	Almost all wetlands now avoided	Impacts reduced from 17.1 acres to 0.5 acre.	NO -see above
Animals, Mammals, Birds	Bat mortality significance unknown	New information may increase projected numbers	Maximum mortality increased from 220 to 540 bats per year; very rough numbers	POSSIBLY Bat mortality doubled; no certainty on significance
	Passerine and raptor mortality not significant; 140-220 and 3-4 birds/year respectively	New information changes numbers considerably	Passerine mortality increased to 100-500 per year; raptor mortality increase from 3-4 to 27 per year; exceeds observed nests and births.	Maximum passerine mortality doubled; raptor mortality is 6 times higher
Energy	None	None	None	NO

TABLE 3

Status of Significant Adverse Impacts
Kittitas County FEIS Compared to ASC and New Information

Discipline	FEIS Significance Conclusions	Relevance of Project Changes or New Information	Comments on Change	New Significant Adverse Impacts?
Natural Resources	None	None	None	NO
Cultural Resources	None	Unknown	Final Cultural Resources report for new project sites not available	UNKNOWN
Land Use	None	The change is to go to EFSEC which would overrule (pre-empt) local land use policies	If sited by EFSEC, it would be inconsistent with the County Comprehensive Plan and zoning regarding Wind Farm overlay areas (See discussion below)	POSSIBLY Siting would violate a Comp Plan regulation and zoning which is a SEPA significance criteria; but would be consistent with EFSEC siting law
Land Use Vegetation	None	New 4,000' foot long transmission line route option added to project. One switchstation eliminated in ASC.	No analysis done of this option. Routing along roadway would reduce impacts. Wetlands along roadway; no data available for a conclusion	UNKNOWN Actual impact not documented Unknown if new impact is significant
Health & Safety	None	None	None	NO
Noise	None	Towers are at new locations	ASC noise analysis shows no significant impacts	NO

TABLE 3

Status of Significant Adverse Impacts
Kittitas County FEIS Compared to ASC and New Information

Discipline	FEIS Significance Conclusions	Relevance of Project Changes or New Information	Comments on Change	New Significant Adverse Impacts?
Aesthetics Visual Resources	Significant Unavoidable Impacts without mitigation; but conclusions seem inconsistent. A "Moderate" impact in 3.10-6 is referred to as "significant adverse" in the text.	New tower locations avoid some view impacts; unknown if new project would "...fit better with the landscape." EIS use of 35mm lens instead of 50mm lens makes towers look further away.	High impact ratings from 1A, E, F, G. Now towers are removed from 1A view and significantly reduced from 1E and F views. 1G view remains. Apparent 35mm lens size raises questions about analysis and impacts conclusions compared to normal protocols	POSSIBLY Lens correction may change impacts; Reduced impacts from relocation may increase again; semantics need clarification
Light & Glare	Conflicting conclusions: Significant Adverse Impacts from Turbine lighting in response to comments (p.5-10) yet FEIS text refers to it as "very noticeable" and not mentioned in significant impacts.	Considerable geographic reduction; new section added to the west. Turbines could be turned off during certain periods to avoid shadow flicker.	No close views of the new section are provided. No assessment of visual impacts of this area is provided. This would reduce shadow flicker which was already not significant	Sensitivity of new section unknown; no indication that impacts are likely NO Lighting reduced since FEIS
Recreation	None	DNR land now part of project	No discussion of possible lack of public access to DNR lands	UNLIKELY
Transportation	None	None	None	NO

3.2 Land Use Laws

The Land Use impacts of this project could create the potential for a new significance issue by the nature of the application and its inconsistency with local laws depending on the interpretation of EFSEC siting law and regulations. Although the land use impacts themselves have been reduced due to the reduction in size of the facility and the consolidation of the facility that has created a more contiguous site, the proposal does not comply with existing local land use regulations. This brings up an issue of consistency, compliance and jurisdiction.

To explain, one definition of significance under SEPA is that “A proposal may to a significant degree:

Conflict with local, state or Federal laws...” (WAC 197-11-330(3)(e)(iii).

The previous application and project before the County would have been required to receive the following approvals:

1. Comprehensive Plan land use map designation site specific amendment to designate a Wind Farm Overlay District
2. Site Rezone to formally adopt such a designation as zoning within the Kittitas County Zoning Code
3. Permit for construction and operation of a Wind Farm Resource and;
4. A development agreement with standards and conditions for development, including mitigation.

Regardless of the impacts of the project, there would have been no significant impacts under the WAC above if the project had been permitted and authorized by the County, consistent with the above comprehensive plan and zoning change. Since it wasn't, the potential may exist for a new significant impact being created by submitting the application to EFSEC and siting it in conflict with those regulations

However, According to State Law (RCW 80.50.110) the conflict may not exist if its interpretation is that local land use laws have no applicability in the face of an EFSEC application. According to this RCW:

(1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated there under, this chapter shall govern and control and such other law or rule or regulation promulgated there under shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended.

If the interpretation is that there are no applicable local land use and zoning regulations once a project is submitted to EFSEC, then there may be no conflict. The potential significance criteria listed above no longer applies.

EFSEC Guidelines (Rules) in WAC 463-28-030 state that the Council must determine whether there is non-compliance as part of their land use hearing. This implies that there still are land use regulations in effect and that the applicant should try to comply with them. If this cannot occur, the Guidelines state that preemption authorized in WAC 463-28-020 would only occur after a request by the applicant. Thus, the Guidelines in WAC 463-28 imply that local land use regulations remain in effect even after an ASC submittal.

Under this interpretation, a new significant adverse impact could be created if an application for which a FEIS has been prepared is submitted to EFSEC, then conflicts with local laws, and needs preemption. Whether or not this triggers the need for a SEIS depends upon an interpretation of state law and whether the Responsible Official feels that this impact is discussed in the FEIS. We make no conclusion here.

3.3 Cultural Resources

Cultural resources are listed as a potential for new significant adverse impacts, not because of an obvious increase in direct and cumulative impacts as discussed under wildlife, but because the final cultural resources survey for the site has not been provided. We do not know whether there will be new significant impacts, from project changes, or from new information at the new properties involved. The FEIS concluded that there were no significant adverse cultural resource impacts. We do not have adequate information to make a determination on the ASC for this topic based on the new properties involved.

3.4 Visual Resources

Visual resources were a significant adverse impact in the FEIS and project changes have not appeared to create obvious new impacts. Many such impacts have been reduced. Part of the new land involved is not assessed in the same way as other lands, which raises a question here, because new lands added to the west side of the site were not the focus of a visual simulation. This report does not conclude whether significant adverse impacts remain. We leave that conclusion to the RO.

Four figures that were used in the initial impact analysis to conclude that there were significant unavoidable visual adverse impacts are relevant to an explanation of changing impacts.

- View 1A which was rated as a “High” level of impact in Table 3.10-6 of the FEIS no longer has a view of the towers. This significant impact has gone away.
- Views 1E and 1F, also ranked as “High”, do not show the towers at nearly the scale as before, showing towers at half the original height due to greater distance from viewers, probably resulting in a new rating of moderate or low. (A formal rating was not done).
- View 1G, rated as a “high” visual impact, has not changed.

Thus, visual impacts were reduced due to tower relocations; however, these and other views may increase again based on the conclusions made below.

3.5 Visual Simulations – Lens Size Protocol

There is another potentially important visual resource assessment factor which might result in new significant adverse impacts, based on new information under SEPA. According to the FEIS, (Page 5-111, response ALG-2) “... a lens equivalent to a 35mm lens on an SLR camera” was used for the visual simulation photos. This was in response to public DEIS comments that the “photography

distorted perception”, suggesting that “the view angle was too wide”. The response was that “This is a common lens for landscape photography”. No attempt was made to confirm the appropriateness of the lens used; to document protocols; or to formally document lens size (magnification) other than the quote above.

We agree with the commenter, and not the response. One goal of landscape photos is to include as much of the landscape and horizon in the picture as possible – often by using a wider angle lens. Visual simulation has a different goal than landscape photography. Visual simulation’s goal is to replicate the human eye and perceived view. Using a 35mm lens (if that is what was done) =conflicts with standard visual resource protocols used in the industry which use 50-55mm lenses to take existing condition photos used to produce simulations. A 35mm lens makes objects look further away than perceived by the naked eye. A 50mm lens represents human visual perception. (See Appendix D). If a 35mm lens actually was used for the photo simulations in this EIS, as implied by the response (the FEIS is not absolutely clear on this) the visual impacts from all views would be understated. A 35mm lens will make objects appear further away than perceived by the human eye. A 50mm lens should have been used.

If a 50-53mm lens was used instead, and the simulations were redone to replace the 35mm lens photos, all tower views would appear closer and more realistic. We do not attempt here to describe how much closer, or what the perceived difference would be. If this is done, someone will have to evaluate whether new significant adverse impacts occur compared to the impacts stated in the FEIS. This project was denied based largely on its visual impact so the importance of this factor is greater for this project than for most others. Significant impacts will be increased by the lens change, Non-significant impacts may approach significance with it. The increased sensitivity of this topic merits additional review.

3.6 Wildlife

New information might trigger a need for a SEIS, depending on whether the Responsible Official concludes that the new and significant increase in projected bird and bat mortality is a new significant adverse impact, or just a higher number; or whether the cumulative effects of the same (which potentially triples the higher impact) are a new significant adverse impact.

3.7 Land Use/Vegetation

New information regarding transmission line length is included in the ASC. Instead of a 300 foot long line as discussed in the EIS documents, a potential 4,000-foot long line is proposed if the power is to be connected to BPA. The ASC decision adds 3,700 feet of new transmission line to the project. To our knowledge no evaluation has been made of this line and its impacts; its route has not been identified, or any information provided on land use, ownership, wetlands, vegetation, cultural resources or visual impacts.

4.0 OPTIONAL SEIS CONSIDERATION

The discussion below considers a separate SEPA compliance option available to EFSEC than those options which are explicitly required under SEPA. The two “required” options available to EFSEC, after adopting the Kittitas County FEIS, are to issue an Addendum, or to issue a SEIS. The content of these documents for this project might be similar. The process the documents go through is not. That is why we provide a discussion of the options available to EFSEC (besides those required) so that they might consider what really is a third option. The third option is to issue a SEIS even if the significance trigger (threshold of significance determination) is not obvious (no new likely significant adverse impacts).

Our analysis does include various factors that might still trigger a significance determination, and includes recommended actions to address some of them. The explanation below states that, even if EFSEC rejects these factors as sufficient to trigger significance, a SEIS could still be an option. This report does not recommend one option over another. Recommendations we make in this report are based on regulatory requirements and our interpretation of them. This is an option, and it is up to EFSEC to decide whether to do it.

SEIS Requirements – As discussed elsewhere in this document, SEPA requires that a SEIS be issued after an FEIS has been published:

“...if there are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts...” or;

(If there is) “New information indicating a proposal’s probable significant adverse environmental impacts. This includes discovery of misrepresentation or lack of material disclosure.”

SEPA also states ((600(3)(b)(ii)) that is not necessary to prepare a Supplement if such impacts “...are covered by the range of alternatives analyzed in existing environmental documents”.

It also states that a lead agency CANNOT issue a SEIS on the *same proposal*, (in 600(3)) because it states that the agency SHALL use the environmental document UNCHANGED unless one of the two conditions above exists (emphasis added). We conclude that this limitation does not apply, because the project has changed in many ways from the one discussed in the FEIS, and is not the *same proposal* as the one in the FEIS.

Addendum Requirements – An addendum can add analysis and information about a proposal but the analysis “...cannot substantially change the analysis of significant impacts and alternatives...”. 600(4)(c). If an Addendum is issued, it identifies the project, includes new information and/or analysis, and is sent to recipients of the FEIS. If circulated with the statement of adoption of the original EIS, the agency can take action as soon as seven days later – with no requirement for public review and comment.

4.1 SEIS Option (Without Significance)

There are SEPA requirements stating when a Lead Agency must prepare a SEIS, and when they cannot (described above). For a revised project, there is no prohibition in SEPA to prepare a SEIS, even if it is not clear as to whether there are new significant adverse impacts. In other words, our interpretation of SEPA is that a Lead Agency can prepare a SEIS in lieu of an Addendum if they want

to. A significance determination is not required. Here are some of the reasons that might support a decision by EFSEC to consider a SEIS, with or without new significant adverse impacts.

Changing Project Without Public Review. The DEIS included a possible range of wind turbine designs and sizes, along with related assumptions to add to the project description which included definite property locations, turbine locations and setbacks. A reasonable “worst case” analysis was done for the visual resource analysis by selecting the biggest tower of those listed for the photos and assessment. The public commented on that project, and those assumptions, in their comments to the DEIS.

In response to those comments, the applicant modified the project in the FEIS and also advanced to the point where they selected their “final” project design. The selected design was a smaller turbine than the one used in the visual resource analysis (aesthetics) and included greater setbacks and other changes. The FEIS, in their conclusions in various sections, concluded that the smaller project “...would reduce aesthetic/light and glare impacts...” and that it was “...preferable visually...” (Page 3-249), but that the height reduction “...would not be enough to significantly alter the overall visual affect of the turbines”. The FEIS clearly sent the message that the smaller tower design had been selected as the proposed action.

The public was not provided an opportunity to comment on the smaller turbine design or changes in setbacks in terms of their adequacy, except during the permitting process. This is not necessarily a problem, just an observation. Other project changes which were assumed to be part of the project in the FEIS, and which were never reviewed by the public as a result, are shown in Table 2.

Now the applicant has revised the project again. They are proposing the original worst case large turbine size and are no longer proposing to build the turbine that the FEIS said would reduce impacts. This larger design was covered by the DEIS visual simulations so it is not “new information” requiring a SEIS, but it is different than the FEIS and has a turbine blade length, and ultimate turbine tower height, that are longer and taller than the examples included in the DEIS. With just an addendum, the public won’t have the opportunity to comment on this either, except through the EFSEC hearing process. The increases are not substantial, however, they do relate to aesthetics - and aesthetics appears to be the most significant issue the project has. Aesthetics was likely the main issue associated with its denial. Table 3 summarizes many of the project changes we have observed through the DEIS, FEIS and ASC. This is not intended to be a complete list.

FEIS Content. In adopting the FEIS as it is, EFSEC assumes responsibility for and supports the analysis in the EIS as meeting EFSEC’s environmental review standards and needs (WAC 197-11-630(1)). The Council should be aware of any statements made in the document that they might not totally support. It is hundreds of pages long and it may not be possible for the Council to see all of these, so a few observations are mentioned here. An Addendum may provide additional information and analysis, but a SEIS more effectively amends the content of the FEIS by allowing an opportunity for public review and input to the new information. Various unsupported, or less than useful, conclusions were made in the FEIS, which EFSEC would be adopting, such as:

- “Energy consumption would not require large volumes of fuel or electricity”. No data was provided to support this statement.
- “The amount of diesel, gas or electricity would be small compared to the County as a whole”. No data was provided to support this statement.

- "... Energy consumption would result in a temporary use of such resources". This reflects a lack of understanding of the topic. No consumptive use of a petroleum resource is temporary.
- Conclusions are made about impacts with no facts to support the conclusions: "Sand and gravel needed for the project would not represent a major new demand." This may be true, but no data is provided to show what is what is available.
- "Construction contractors would follow applicable conservation standards for fuel and water". No standards are provided.

Wildlife: The FEIS concludes (p3-97, paragraph 4) that the definition of significance to wildlife is tied to the increase in mortality over other wind farms, rather than the mortality based on the population base. This conclusion does not seem particularly relevant to EFSEC's decision. EFSEC is not choosing among alternatives to pick the "best" one or deny the "worst". EFSEC's decision is based on the benefits and impacts of this project, regardless of whether they are better or worse than others.

The FEIS concludes that such bat mortalities are expected to be "insignificant", yet no bat population data is provided to substantiate this claim. While the actual number is uncertain and likely to be lower (than 540), the FEIS concludes that these projected bat mortalities are unavoidable, and still concludes that 180-540 mortalities per year is not significant.

No mitigation is provided for bat mortalities. A monitoring study is proposed but it "...would not affect mitigation requirements." None were proposed. Instead, a Technical Advisory Committee is proposed to look into it. Such a committee, according to the ASC, would have no authority.

The level of risk to 5 avian species was concluded to be "low" (P.3-102) with no definition of "low". The deaths of up to 500 birds and up to 500 bats was concluded to be insignificant, with no definition of significant, other than an assumption that these impacts would not be significantly greater than other wind farms.

The No Action alternative, with no basis for analysis or findings, concludes that "Production of a comparable amount of electric power...could have significant environmental impacts on the wildlife habitat and wildlife". It also concludes that land conversion for residential development, again with no data, site plan, or proposal, could have significant impacts to big game. The project has since changed and 33% of the property is owned by DNR and would have wind towers but would not have homes. The conclusion that up to 500 bat deaths and 500 bird deaths is *not* a significant impact, (with no quantified justification) yet an undefined alternative power source could *have* significant adverse environmental impacts (with no quantified justification). These unsupported conclusions make No Action look worse than the proposal, but the opposite conclusion is just as logical. These contrasting conclusions appear inconsistent.

Note If EFSEC does feel that the project status warrants public review, we recommend that EFSEC not consider issuing an "Addendum" and asking for public comment on it. While this is not prohibited under SEPA, it would be a more appropriate process, if public comments are desired, to follow SEIS procedures for review and comment and call the issued document a SEIS.

Project Uncertainties: The following information was noted in this review of the application's potential for creating new significant adverse impacts. This review was not an analysis of completeness of the application under WAC 463-42.

Vegetation and Wildlife

- The vegetation map (Figure 2) in the application's Vegetation and Wildlife technical report (Tab 5) states that new areas require additional ground-truthing, suggesting that this is not complete.
- A 200-acre habitat mitigation site is proposed. It's location, characteristics, and value has not been identified and is unknown to the public.

Cultural Resources

- The ASC states that the cultural resources work on the new site is not done. The public has not had an opportunity to comment on any final cultural resources assessment.

Public Comments: A public hearing was held in Kittitas County to meet the requirements of WAC 463-26-025 to announce the project and introduce the attorney for the environment. There were comments made at the hearing that, if true, might have a bearing on significance or the appropriateness on content of the FEIS for adoption.

One citizen stated that the turbines issued noise at a level of 105 decibels. Another said that Figure 4 in the EIS left off hundreds of homes and lots that should have been on the figure. Other comments related to the likely loss of DNR land for hunting and recreation, and the blinking nights at night and turbine blade noise during the day that they could hear and see for many miles. Two citizens commented that one year of avian studies, or bat studies, was not adequate, and that other sites did more. Our effort did not include a site reconnaissance or any technical analysis so we cannot confirm any of these statements. Any new information on noise emissions, loss of access to public lands, omission of hundreds of homes, or inadequate field studies could be corrected in the Addendum/SEIS process, if correct, or considered in the significance analysis and decision.

Impact Changes Vegetation and Wildlife: The larger turbine blade and advances in standard impact assessment methodologies for wind farms has changed the predicted mortalities for passerine birds in the ASC. Now a range of 100-500 birds per year is predicted to be killed by the turbines. This compares to 140-220 total bird kills listed in the FEIS for 120 turbines. Maximum passerine bird kill projections have therefore increased from 220 to 500, with no opportunity for public comment.

Raptor fatalities in the FEIS were predicted to be 3-4 per year. (p.3-99). Now raptor mortalities are expected to be six to nine times that number, or up to 27 per year. (ASC. Tab 5, p.8). This new number has not been reviewed by the public. If this same new rationale is applied in the cumulative impact analysis, instead of the one that was done, cumulative impacts for the three projects might be three times that amount.

Bat fatalities in the FEIS were concluded to be similar to bird mortalities, with little supporting information. The wildlife appendix supporting the wildlife section in the FEIS ignored bats. The FEIS conclusion, then, (similar to bird mortalities) appears to be that maximum bat kills will be up to 500 bats per year and, with no data on local populations, the FEIS concludes that this will not be a

significant impact. This analysis only shows up in the FEIS and application, so it was apparently not subject to public review and comment.

Tower Locations vs. FAA Clearance: The FEIS included 10 towers in the SE portion of the project that were still in conflict with VFR patterns from Bowers Field. The current tower configuration has eliminated those towers and none fall into this conflict. This conflict would likely have been resolved regardless had FAA implemented Kittitas County Airport Management's request to raise the Traffic Pattern Altitude to eliminate the issue.

Tower Locations vs. Visual Significance – Views 1A, E, F and G were ranked “high” impact. After moving the site and towers eastward, views from 1A are Low (gone); views from 1E and 1F are probably “low” or “moderate”, and views from 1G are the same. Three of the four significant view shed impacts are reduced or eliminated. Impact ratings might change with the use of a 50mm lens.

Bald Eagles - Potential bald eagle mortalities are discussed with the conclusion that “...there have been no documented bald eagle fatalities at wind plants...” while a study of eagles at Altamont Pass sponsored by the California Energy Commission (CEC) (Hunt, 2002) found that 43 radio tagged Golden Eagles were killed over an 88 month period at Altamont Pass, and suggested much higher mortalities than that because non-tagged deaths were not counted. The application mentions that Golden Eagles may occur in the project area, but that they are rare winter residents. The application doesn't mention the CEC study.

The ASC concludes that the new project, with fewer turbines and in a smaller area “...may further reduce the potential for these impacts.” This appears contrary to the conclusion in the analysis that bird mortalities are now projected to increase based on MW output, not tower number. It also states that “...the new proposal is smaller in size than the original proposal...”. This is true for land requirements, but the turbines proposed are bigger than the final turbines proposal adopted for and described in the FEIS, and has a longer turbine blade (30') than any wind turbine considered in either document – and mortality is based on MW output, not tower number.

Visual Analysis: The lens size discrepancy discussed may trigger a new significant impact if redone, or it may not. If new simulations are prepared with a 50mm or 55mm lens used to photograph the existing views, the towers will appear closer and bigger. If EFSEC interprets this increase in size to be a new significant adverse impact, or new information indicating such an impact, a SEIS is required. If EFSEC decides to conduct this analysis, with new simulations, the analysis process will take some time, and then a subjective decision will have to be made regarding significance, potentially, giving rise to an appeal and eventual SEIS. If an SEIS is done instead, the analysis would be complete and the appeal risk moot.

5.0 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Findings

The proposed action has continued to evolve and change from the DEIS through the FEIS and continuing through the ASC.

One topic, visual resources/aesthetics, was concluded to have a significant adverse impact in the FEIS. Mitigation presented in the Application has reduced those impacts in some areas, but not all.

The public has reviewed and commented on the proposed action as described in the DEIS but not on changes made to the project as described in the FEIS, and not on the project as proposed in the ASC.

The changes we have noted through these documents do not appear to have created any new significant adverse impacts, although we have not made a conclusion in all areas.

New protocols in estimating avian mortalities from wind farms have increased projected mortalities by as much as 600% or more.

The proposed project has a smaller site footprint and larger tower size than discussed in the FEIS. Most elements of the environment are not impacted significantly by the project. Those that are impacted are mitigated further in the ASC.

The FEIS used a 35mm lens for the visual analysis.

A 200 acre vegetation and habitat site is proposed but not identified.

Selecting a final substation location in the ASC has created a new 4,000-foot long transmission line corridor alternative to the BPA line.

5.2 Conclusions

We cannot make significance conclusions for cultural resources, vegetation or habitat loss due to lack of information. We know of nothing that suggests that impacts are likely to be new and significant. These remain potential new impact areas without confirmation.

Significant adverse visual impacts have been reduced by mitigation; but not necessarily to non-significance.

Potentially new significant adverse impacts may have arisen since issuance of the FEIS in the areas of wildlife (bats), birds (passerines and raptors), cumulative impacts, and visual simulations from all viewsheds - all based on new information. A proposed new 4000-foot long transmission line corridor has not been evaluated.

5.3 Recommendations

We recommend that EFSEC adopt the existing FEIS for the Desert Claim project as issued by Kittitas County to fulfill part of their SEPA requirements for this project. This adoption would occur under any scenario.

We do not have information to support a firm decision that there are new significant adverse impacts, primarily because there are no explicit criteria presented to make that decision. We have concluded

that the issues with passerines, raptors, possibly bats, new project area and visual simulations techniques may each, or in combination, rise to the level of a new significant adverse impact.

We recommend that EFSEC issue a SEPA Addendum, at least, and that that Addendum include a final project description to update a somewhat confusing amalgam of project components that are interchanged in discussions from the DEIS and FEIS; and that the Addendum include various corrections or clarifications, or changed conclusions, which would make the FEIS more acceptable to EFSEC as a decision document, with improved substantiation and conclusions, as discussed in this report. We recommend that the Addendum include new and final figures of the turbine design and size, and final visual simulation figures.).

We have concluded that EFSEC has the option of issuing the information discussed above in a Supplemental EIS with or without new significant impacts, instead of an addendum, to allow the public the opportunity to comment on the project, as currently proposed, and to consider the public's (including agency) opinion of the degree to which project changes mitigated the impacts discussed the DEIS and FEIS, or created new impacts. Another potential benefit to this step is that EFSEC would have their own SEPA document, with their own analysis and conclusions in it, as opposed to a smaller Addendum, which would rely entirely on the adopted Kittitas EIS for SEPA compliance. Another potential benefit would be to avoid the uncertainty and appeal risk of deciding there are no new significant adverse impacts and deciding on an Addendum alone. (If the Responsible Official decides that information in this report suggests that new significant adverse impacts are identified, then a SEIS would be the only option).

We recommend that EFSEC revise and include a representative number of visual simulations of the project, based on an existing and projected view via a 50mm lens, instead of a 35 mm lens as the FEIS has appeared to do. Alternatively, EFSEC should decide if the change to a 50mm lens creates a significant difference in appearance. We suggest consideration of a potential visual simulation and viewer identification for the new section to the West. We recommend that EFSEC determine if the lens size difference significantly increases what has been determined to be a significant adverse impact in some areas and less than significant in others.

6.0 REFERENCES

Hunt. 2002. California Energy Commission (CEC).

APPENDIX A

**SEPA REQUIREMENTS FOR THE USE OF A SUPPLEMENTAL
EIS OR OTHER ADOPTION/ADDENDUM PROCEDURES**

APPENDIX A

SEPA REQUIREMENTS FOR THE USE OF A SUPPLEMENTAL EIS OR OTHER ADOPTION/ADDENDUM PROCEDURES

INTRODUCTION

This appendix consolidates the State Environmental Policy Act (SEPA) guidelines under Washington Administrative Code (WAC) 197-11-600 to 640 that lay out procedures and criteria to consider when deciding on whether or not to issue a Supplemental Environmental Impact Statement (SEIS) and when and how to adopt another EIS to meet an agency's SEPA requirements. Specific adoption recommendations are found in Appendix C.

As discussed in the main body of this report, EFSEC has two separate choices to make here regarding the potential need for a SEIS. First; there is a need to decide whether significance criteria have been met under SEPA which would trigger the need for a SEIS. Such criteria are defined in WAC 197-11-600(3)(b) which are described here. Second; because EFSEC will adopt the existing Kittitas County-prepared FEIS to meet their SEPA requirements, at least in part, EFSEC must decide if that EIS meets their needs for a decision. If not, in our opinion a SEIS could be issued to meet those needs. Alternatively, an Addendum could be issued to meet them, but with less public review. A SEIS is prepared as a draft and final, similar to a SEPA EIS, with public comments, usually a public meeting, and revisions. An Addendum is new information sent to recipients of the FEIS, with no particular public review requirements.

Because the County EIS would be adopted and used to meet EFSEC requirements for a modified project, this EIS will be a new EIS for purposes of potential challenge and appeal. The previous EIS was not challenged in a court of law and, as a result, has not been affirmed as adequate or inadequate by a court. An adopted EIS for a modified project is also appealable, so the Council should be aware that the lack of any appeal of the previous EIS affords no protection to the Council's position and use of this EIS for their decision. In this regard, if the Council adopts this EIS unchanged, it is important for the Council to be comfortable that the contents of the existing EIS represents the project and its impacts sufficiently to support the SEPA requirements associated with the Council's eventual decision.

SEPA Requirements for a SEIS

SEPA states, in WAC 197-11-600(b):

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

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

Discussion – There has been no new threshold determination or Environmental Checklist made for this project. The information included in this report can be used for that purpose.

The guidelines under (i) above are clear. If a revised proposal creates new probable significant adverse impacts, then a SEIS is required. Our report attempts to highlight the changes in the project made since the FEIS was issued, with consideration for alternative proposals that were also discussed in the EIS, along with their impacts.

The guidelines under (ii) are broader in scope in terms of triggers for a SEIS, and the information that can be considered to avoid one. For example, if substantial changes were made in the project after a FEIS is issued, that did create new impacts compared to the earlier proposal, and those impacts were discussed in the EIS as a result of proposed mitigation, or as a result of an alternative for which impacts were evaluated, then such impacts were discussed in the EIS. Under either of these cases, our interpretation is that SEPA would not require a SEIS. This is because the impacts of “a range of alternatives” are covered in the FEIS. Therefore, the impacts from such project changes do not result in “new information” – even if it was a new decision by the applicant to build one alternative instead of another. This may be the case here, where the project before EFSEC is bigger than the one proposed and described in the FEIS as the applicants selected project. This is because the FEIS analysis considered a larger alternative in a “worst case” assumption that was almost as big (combined tower and blade size) as the current project before EFSEC.

SEPA REQUIREMENTS FOR ADOPTION

WAC 197-11-600(4) describes procedures for adoption and conditions when another document may be used by a lead agency to meet their SEPA requirements. Here we list those options along with our opinion on which ones may apply and which ones may not apply, based on our understanding of EFSEC’s needs. One driving factor affecting options for EFSEC is that it is highly likely that EFSEC does need a SEPA EIS to meet their SEPA requirements for this project. This project is controversial and another agency has formally concluded that its significant unavoidable adverse impacts were sufficient to deny the project. Under such circumstances, we do not believe that a determination of non-significance (DNS), or mitigated DNS is a feasible option for EFSEC. Nor does the project qualify for a categorical exemption. Because there are only three possible SEPA compliance options, this would leave an EIS as the only SEPA compliance document.

Under 197-11-600(4), the four options available to the SEPA lead agency to complete their SEPA compliance process are as follows:

- (a) *“Adoption”, where an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same proposal for which an environmental document was prepared are not required to adopt the document.*
- (b) *“Incorporation by Reference” where an agency preparing an environmental document includes all or part of an existing environmental document by reference.*
- (c) *An addendum, that adds analysis or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.*
- (d) *Preparation of a SEIS.*
- (e) *If a proposal is substantially similar to one covered in an existing EIS, that EIS may be adopted; additional information may be provided in an addendum or SEIS (see (c) and (d) of this subsection).*

Discussion – Our view of these choices is that (a) Adoption will be required for this project, regardless of other options considered. We assume that EFSEC does not plan to prepare and issue a new EIS on this project and also assume that EFSEC needs an EIS to comply with SEPA. The proposed action is not the same proposal discussed in the FEIS; it is different in turbine size, turbine number, land area used, and other factors, but it is similar in most respects to the proposal or alternatives discussed and evaluated in that document. Therefore, we assume that, regardless of any other additional decision, EFSEC will adopt the Kittitas County FEIS for the Desert Claim Wind Power Project as part of their SEPA compliance process.

(b) Incorporation by Reference is not likely to be a viable option for EFSEC because EFSEC needs a SEPA EIS to make their decision. Incorporating another document by reference can support an EIS, but not replace it. We do not feel that (b) is an option, unless a full EIS is issued by EFSEC.

(c) An Addendum is an option if EFSEC does not issue a SEIS. If no SEIS is issued, we feel that an Addendum would be a useful tool to update the public on the project, its changes, revisions to the FEIS, possibly new analysis, and would explain the EFSEC decision process and rationale for its SEPA approach.

(d) Preparation of a SEIS – This is an option to EFSEC with or without new significant adverse impacts, in our opinion.

(e) (See (e) above – These are the choices available to EFSEC)

FEIS Adoption - Our conclusion is that, regardless of any SEPA threshold decision and additional document decision to be made about an Addendum versus a SEIS, EFSEC will adopt the Kittitas County FEIS.

SEIS - Then EFSEC must decide whether to issue a SEIS or an Addendum. An SEIS is required if EFSEC makes a finding that project changes or new information identified new probable significant adverse impacts. The SEIS criteria are found in 600-(3)(b)(i) and (ii). (See below for another possible option).

Addendum - If no new probable significant adverse impacts are created by project changes, or uncovered via new information, a SEIS is not required. An Addendum, can then be prepared and issued by EFSEC. The Addendum can update the current status of the project and/or revise FEIS sections that EFSEC feels need revision, as long as the analysis in the Addendum “...does not substantially change the analysis of significant impacts and alternatives...”. (In which case, a SEIS would be required).

Procedures for issuing an Addendum under SEPA are specified in WAC 197-11-625. The procedures have no effect on the decision process related to an Addendum or SEIS and are not repeated here (See Appendix C).

Procedures for Adoption under SEPA are specified in WAC 197-11-630. One adoption requirement does potentially relate to the procedures to be followed by EFSEC in their adoption and/or Addendum decision. For that reason, it is included here. It is found in WAC 197-11-630(1):

“The agency adopting an existing environmental document must independently review the content of the document and determine that it meets the adopting agency’s environmental review standards and need for the proposal.”

Having set that requirement, SEPA allows an Addendum to revise an adopted document to meet the agency's environmental review standards, and does not require a SEIS to do so. SEPA however, does not direct an agency toward a required or recommended solution, should the existing environmental document NOT meet the adopting agency's environmental review standards. The public may not be given an opportunity to comment on any such revisions if an Addendum is used to address them. The only requirement for an Addendum is to send it to recipients of the FEIS before a decision is made. There is no mechanism for public review.

Comment: Although SEPA requires a SEIS in the case of new significant adverse impacts, from project changes or new information, it does not prohibit it for other reasons. Therefore, in our opinion, if EFSEC wanted to issue a SEIS for any content or procedural reason, we find nothing in SEPA that would prohibit that. Possible content reasons are discussed in the body of this report.

SEPA does restrict an agency from preparing a new environmental document if the project is unchanged (WAC 197-11-600(3)). In our opinion, this project has changed since issuance of the FEIS and this provision does not apply.

APPENDIX B

SIGNIFICANT ENVIRONMENTAL IMPACT – SEPA THRESHOLD CRITERIA

APPENDIX B**SIGNIFICANT ENVIRONMENTAL IMPACT – SEPA THRESHOLD CRITERIA**

Although the principal focus of this report was to determine whether the revised project, or information related to it, was likely to create new significant adverse impacts, and not whether the project itself caused significant impacts, the two topics are obviously related. For this reason, a summary of significance criteria under SEPA is included here.

As Lead Agency under SEPA, EFSEC must determine whether any application before the Council “is likely to have a probable significant adverse impact”. This “threshold decision” will determine whether an EIS is required based on new information or new impacts from the revised project. In either case, to determine whether a new significant adverse impact exists, the definition of significant must be clear. This appendix discusses the definitions of significance under SEPA.

SEPA defines a proposal needing an EIS as one which “is likely to have a probable significant adverse impact” (WAC 197-11-330 (b)) and “significantly affecting the quality of the environment” (330). SEPA provides various factors to consider in developing this determination. They are defined in (3) (a-e) and include:

- (3) *In determining an impact’s significance (197-11-794), the responsible official shall take into account the following, that:*
- (a) *The same proposal may have a significant adverse impact in one location but not in another location;*
 - (b) *The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environmental;*
 - (c) *Several marginal impacts when considered together may result in a significant adverse impact;*
 - (d) *For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified.*
 - (e) *A proposal may to a significant degree;*
 - (i) *Adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;*
 - (ii) *Adversely affect endangered or threatened species or their habitat;*
 - (iii) *Conflict with local, state, or federal laws or requirements for the protection of the environment; and*
 - (iv) *Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.*

An explanation of the factors listed above is provided below.

- (3) (a) *A Given Project May Be Significant in One Location and Not Another.* This evaluation factor considers the impacts of a project based on the location in which they occur. It

recognizes the sensitivity of the site, of adjacent lands, and those in the area. A project located in a highly populated area or environmentally sensitive area may have different concerns than the same project in less sensitive, less populated, or less developed areas.

- (3) (b) *Absolute Impacts Are Important, Regardless of The Existing Environment.* We interpret this criterion to mean that significant impacts can occur even if the existing environment is not sensitive to them (e.g., it is degraded, non-productive, barren, etc.).
- (3) (c) *Several Marginal Impacts When Added Together May Be Significant.* To consider this criterion under SEPA, we suggest that the reviewer consider the combined effects of those impacts that are particularly cumulative, instead of trying to add “apples and oranges”. For example, instead of trying to “add” air emissions and noise, consider major categories which can be considered cumulative and can more appropriately be added together, such as traffic from construction plus traffic from operation.
- (3) (d) *For Some Proposals, it May Be Impossible to Forecast The Environmental Impacts with Precision, Often Because Some Variables Cannot Be Predicted or Values Cannot Be Quantified.* This particular criterion does not necessarily help the decision maker with the threshold decision. It does not guide the decision maker toward a specific action if there are unpredictable impacts. It might be interpreted to suggest that one should prepare an EIS so that the public is informed that impacts are unpredictable.
- (3) (e) (i) *Adversely Affect Environmentally Sensitive or Special Areas.* No new areas are affected apparently. Areas within the 4,000 foot transmission line are not known.
- (3) (e) (ii) *Adversely Affect Endangered or Threatened Species or Their Habitat.*
- (3) (e) (iii) *Conflict with Local, State, or Federal Laws or Requirements for The Protection of The Environment.* Whether the project conflicts with land use and zoning may depend on an interpretation of the WAC versus the RCW establishing EFSEC.
- (3) (e) (iv) *Establish a Precedent for Future Actions With Significant Effects, Involves Unique and Unknown Risks to The Environment, or May Affect Public Health and Safety.* We know of no precedent being set here or any unique risks that were not already covered in the FEIS.

APPENDIX C

RECOMMENDED ADOPTION PROCESS KITTITAS COUNTY FEIS

APPENDIX C

RECOMMENDED ADOPTION PROCESS KITITAS COUNTY FEIS

ADOPTION PROCEDURES

Adoption procedures under SEPA are specified in WAC 197-11-630. We do not repeat the entire WAC here but, instead, offer our suggested approach to adoption of the Kittitas County FEIS on the Desert Claim Wind Farm Project, based on the WAC. The adoption process discussed below would follow EFSEC's independent determination under -630(1) that the document meets EFSEC's review standards and needs for the proposal.

First; Using the Adoption form identified in -965, complete the form and describe the project, applicant, location, FEIS title, Lead Agency and document description, and its availability for review. Then sign, date, and issue the form. The form should be sent to any agency with jurisdiction that has not seen the FEIS. We know of none, although it could be sent to the EFSEC mailing list for the Desert Claim project as a start. It should go to BPA if it hasn't already. We also recommend that the form be sent to all recipients of the FEIS and possibly a list of public meeting and hearing attendees or others at EFSEC's discretion. We also recommend, in the spirit of 197-11-630(5), that the fact that the earlier project was denied, be included in the notice. (Actual distribution of the form will be influenced by the decisions of whether or not to prepare a SEIS or Addendum.

There are additional distribution requirements if neither a SEIS nor an Addendum is being issued. We do not feel these would apply, and we do not repeat them here.

The adoption notice must be placed in libraries and sent to anyone requesting it. EFSEC would, as a matter of practice, also post it on EFSEC's web site. Mailing it to a wider distribution is not required but, of course, is an option.

Second; To supplement the adoption of the EIS, and as explained in the adoption notice, EFSEC should prepare a SEPA Addendum at a minimum and the Addendum would be circulated as prescribed under SEPA regulations. The adoption notice must be distributed with the Addendum. The addendum should include any supplementary information or analysis needed to revise, update or correct information in the FEIS with which EFSEC has any issues, short of substantial analysis of significant impacts. The longer the addendum gets, the more it may appear that a SEIS is a better approach.

Or; as discussed and recommended for consideration in this report, EFSEC could prepare and issue a SEIS. This would include the same information an Addendum might have included, but would be issued as a draft and final with public comment. Additional substantial analysis on significant impacts may or may not be included. A SEIS could be issued because a significance threshold was exceeded, or for other reasons, as discussed in this report. If a SEIS is prepared, the adoption notice must be included in the SEIS.

As implied by the process above, distribution of the Adoption Notice is determined by the choice of Addendum or SEIS.

APPENDIX D

**STANDARD PRACTICES
LENS SIZE SELECTION FOR VISUAL SIMULATIONS**

APPENDIX D

STANDARD PRACTICES LENS SIZE SELECTION FOR VISUAL SIMULATIONS

Various studies have been done to establish protocols and best practices governing visual impact assessment procedures and simulations that should be used for visual resource assessment and simulations in general, and for wind farms in particular. There are many studies in the literature confirming the appropriateness of 50mm lenses for visual simulations. Select quotes and citations of lens selection by various agencies and practitioners are listed below.

“The Department shall prepare high quality representative photographs from each identified viewing location (i.e., photo station) keyed to the maps and showing both existing and proposed/simulated views. At least two, 8-1/2 inch x 11 inch photographs using 55mm and 85mm camera lenses should be provided from each photo station.”

*New York State New York State Department of Transportation. 2006. Draft Guidelines for the Adirondack Park. Available online:
https://www.nysdot.gov/portal/page/portal/divisions/engineering/environmental-analysis/repository/appendix_i.pdf. Accessed 7 Feb. 2007. p. 228*

“Use a 50 or 55 mm lens to maintain the same proportions on photographs as the ones seen in the field. Avoid wide-angle or telephoto lens. A wide-angle lens (e.g., 28 or 35 mm) provides a wider angle of vision, but ‘pushes’ landforms away from the viewer; a telephoto lens (e.g., 200 mm) ‘pulls’ landforms closer to the viewer.”

Ministry of Forests, Forest Practices Branch. 2001. Visual Impact Assessment Guidebook. 2nd ed. For. Prac. Br., Min. For., Victoria, B.C., p. 42.

“It therefore follows that when the common recommendation is made that a 50mm standard lens (35mm camera) most closely approximates to the human eye, this ‘standard’ or ‘normality’ is relative and qualified (and this definition of ‘normality’ is challenged in some specialized photographic literature). If a wide-angle lens is used, for example for panoramic effect, the size of the subject in the foreground will increase in relation to the background; in the case of windfarms in a landscape scene, the effect will be to under-represent the relative size of the towers and under-estimate their visual magnitude.”

University of Newcastle (2002) Visual Assessment of Windfarms Best Practice. Scottish Natural Heritage Commissioned Report F01AA303A.

“A 50 mm lens provided an image as close to the human visual system as possible.”

Enhanced Night Visibility Series: Phase III – Characterization of Experimental Objects December 2005 FHWA-HRT-04-147; U.S. Department of Transportation Federal Highway Administration Research, Development, and Technology Turner-Fairbank Highway Research Center 6300 Georgetown Pike McLean, VA 22101-2296.

“A 35-mm camera with a 50-mm lens was used consistently throughout the process, with a matching electronic camera lens to allow for viewing of the computer-generated model in the same way that the proposed project would be viewed in the field.”

USDOE (2003) TEP DOE/EIS-0336; Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement (July 2003).

“Each of the photographs used in this visual analysis depicts a view of the proposed Project mine and process area and related photo-simulations taken from the identified ‘Key Observation Points’ (KOPs) using either a 50/55 mm camera lens (i.e., the photographic lens that best equates to the depth of field from the human eye), or by computer adjustment of a landscape photograph to an image equivalent to a photograph taken with a 50/55 mm lens. The photographs are representative of what the human eye would see from the respective KOPs.”

Imperial County, California Final Environmental Impact Statement/Environmental Impact Report, Volume I, State Clearinghouse No. 95041025 September 2000. Prepared by: Bureau of Land Management County of Imperial El Centro Field Office Planning/Building Department El Centro, California El Centro, California.

“All photos (of an offshore wind farm) were taken with a standard 35 MM film camera with a 50 mm lens to approximate normal human eye sight relative to scale.”

Massachusetts Technology Collaborative (an energy research agency in Massachusetts). Available online at: www.mtpc.org