

Kittitas County, Washington

BOARD OF COUNTY COMMISSIONERS

District One
David B. Bowen

District Two
Alan Crankovich

District Three
Mark McClain

April 4, 2007

The Honorable Governor Christine Gregoire
PO Box 40002
Olympia, WA 98504-0002

And to:

Allen Fiksdal
EFSEC Manager
Energy Facility Site Evaluation Council
925 Plum Street SE, Building 4
PO Box 43172
Olympia, WA 98504-3172

Re: EFSEC Application No. 2003-01; Kittitas Valley Wind Power Project

Governor Gregoire and Mr. Fiksdal,

Please find attached the Kittitas County Motion For Reconsideration regarding the EFSEC recommendation to grant approval to the Kittitas Valley Wind Power Project, KVVWPP, application which would preempt local land use decision making in contradiction to the Growth Management Act.

The Kittitas County Board of County Commissioners, BOCC, purposely developed a process to review wind power applications that mirrors the Comprehensive Planning process. We invoke the SEPA process which generates an Environmental Impact Statement. We conduct Public Hearings before the Planning Commission and the BOCC to address the merits and mitigation requirements based on the EIS and relevant public testimony.

If an application is approved by the BOCC we process a rezone, amend the Comprehensive Plan with a Wind Farm Overlay Zone, and enter into a development agreement. The Wild Horse Wind Power Project by Horizon Wind Energy is a good example of how our process functions in an efficient and effective manner, four months from beginning to end.

Applicants have the option of filing their application with EFSEC, which is not a requirement under our procedures, adds 4-8 months to the application process along with additional expense. Applicants who were approved and those who were denied have voluntarily opted into the EFSEC process for their internal business purposes.

In reviewing the record from EFSEC we feel that the EFSEC Board members have erred in their review of the relevant issues. There were two issues which caused the BOCC to deny the KVVWPP application.

First, the setbacks from non-participating landowners proposed by the applicant did not appropriately address the mitigation identified in the EIS and in the expert testimony of the

applicant witnesses, Andrew Young and Chris Taylor. We suggested a variance process for topography and consideration of agreements with non-participating landowners for exceptions to the setbacks determined necessary in the EIS which the applicant declined as an acceptable process to address mitigation measures.

Second, the site specific Development Agreement was not complete or accurate. A site plan with the approximate location of the requested number of towers was not provided after numerous requests and the agreement contained information relevant to a different project and specific site location.

Work product of this magnitude mandates by GMA and common sense that the mitigation identified in the EIS must be addressed. The BOCC could not put their signatures on such an agreement, the applicant stated the project was not economically viable at setbacks greater than 1,320' and the BOCC was given notice that there was no room for further discussion or negotiation on the issue. This required an appropriate denial of the application.

If the applicant agrees to the setback imposed by EFSEC, which is larger than 1,320', then they have not shown a good faith effort in the local process and their application should be remanded back for further consideration at the county level or denied by the Governor upholding the decision of the local land use decision making body as required by the GMA.

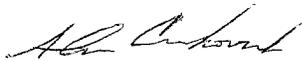
During your recent visit to Kittitas County to approve the Wild Horse Wind Power Project you indicated deference must be given to the local legislative authority. This position is supported by the GMA and numerous Supreme Court decisions.

Given your previous statement we trust you understand the full implication of preempting the local land use authority not only in land use decisions regarding siting of energy projects but all land use decisions.

WSAC members are expressing their concerns over five state agency personnel, and one governor appointee along with a token county representative providing recommendations to the Governor for preemption of a local land use decision.

We trust that when you review the record you will see the project does not meet the mitigation requirements of the EIS, that you understand preemption of a local land use decision would be inappropriate and the applicant did not provide sufficient information to the process from which the BOCC could approve the project in good faith.

Sincerely,



Alan Crankovich, Chair



David B. Bowen, Vice Chair



Mark McClain, Commissioner

cc: Parties of record with enclosures

1 **Growth Management Has Been Ignored In The EFSEC Recommendation**

2 Local planning is the cornerstone of the Growth Management Act (“GMA”). Kittitas
3 County has lawfully adopted GMA planning regulations to consider siting of wind farms.
4 Kittitas County has appropriately and fairly considered this project proposal pursuant to its GMA
5 planning process. The applicant has presented nothing to demonstrate that the County decision
6 was unlawful. EFSEC has marginalized and made irrelevant the entire concept of local planning.
7 They have, in fact, attempted to take over the local planning process and insert themselves as the
8 GMA decision maker for Kittitas County. (Council Order No 826 at page 16) Such a position
9 can not be tolerated.

10 **EFSEC Ignored The Environmental Analysis**

11 The Environmental Impact Statement demonstrates that significant adverse
12 environmental impacts exist within one-half mile of the turbines. There is, in fact, not even one
13 visual analysis conducted at the distances EFSC has approved. (EFSEC transcripts at page 412).
14 EFSEC has ignored this objective FEIS, prepared by independent consultants, and established
15 setbacks solely upon the applicant’s paid “expert” testimony that contradicted the FEIS.
16 (Council Order No. 826 at page 31). That person did not actually do any true scientific analysis
17 and did little more than analyzing impacts for the wind farm by flying over the site in a
18 helicopter. (EFSEC transcript at page 276). EFSEC should have relied upon objective
19 environmental analysis, as the County did, rather than the paid testimony of the project
20 proponent.

21 **The Setbacks Sought by Kittitas County Were Based Upon Objective Analysis**

22 The Kittitas County Board of County Commissioners sought a half mile setback from
23 adjacent homes based upon the objective environmental analysis that indicated such a setback
24 was necessary to reduce the visual impact from significant to moderate. (Kittitas County
25 Resolution 2005-46, Findings of Fact Conclusions at Law, paragraph 8) Kittitas County was not

1 seeking setbacks that would result in zero impact or that would result in a wind farm that cannot
2 be seen. That one-half-mile setback would merely reduce the impacts from significant to
3 moderate, and was reasonably based on the environmental analysis.

4 **Applicant Acted in Bad Faith and Refused to Work with the County**

5 The Applicant quite literally walked away from the Kittitas County land use process. The
6 applicant proposed an incomplete and ill defined project to the County that had setback proposals
7 of 1320 feet and then refused to answer questions or respond to the questions of the
8 commissioners who sought clarification. The proponent then gave the ultimatum that “At this
9 point you could vote thumbs-up, thumbs down on this project. The application is before you.”
10 (Kittitas County Hearing Transcript, May 3, 2006 at 49 – 52). The County was seeking a
11 minimum setback of a half mile from neighboring residences and proposed a variance process to
12 address potential locations where it could be demonstrated a lesser setback would be appropriate
13 based upon specific site analysis. (EFSEC transcript at page 497 – 500) The applicant refused to
14 discuss such a process. Applicants are required to work with the County, and here they did not.

15
16 **The EFSEC Recommendation Should be one Of Either Denial Based upon Rejection By
the Applicant or Denial Based Upon Bad Faith of The Applicant.**

17 The applicant told the County it should vote “up or down” to its insistence upon a 1320
18 foot setback. The applicant stated that this 1320 foot setback from residences “represented the
19 greatest setback distance that allowed for a viable project.” (Exhibit 42 at page 13, line 4 – 5).
20 The applicant walked away from the County process when the County refused to permit such an
21 inadequate setback. The setbacks EFSEC called for exceeds 1320 foot. If the applicant was
22 being honest in its dealings with the County, they would necessarily have to decline to enter into
23 a site certification agreement because it is, according to them, not a viable project. If they agree
24 to the conditions EFSEC proposed, then that is a clear admission to their bad faith. Preemption
25 is an extraordinary request. Allowing such bad faith tactics simply serves to marginalize the

1 local planning process since it demonstrates that EFSEC has no expectation that applicants make
2 any real attempt to work out issues with local jurisdictions as required under the EFSEC
3 regulations.

4 **EFSEC's Recommendation Conflicts With It's Own Regulations**

5 EFSEC criteria requires that the applicant demonstrate that there are no other alternative
6 locations in the County. The record demonstrates there are several other potential wind farm
7 locations in Kittitas County. (Exhibit 51 (DPT) page 4 – 6) EFSEC has inexplicably found
8 compliance with the “no other alternative site” criteria because of “the Applicant’s lack of
9 control of the property at any of the alternative sites”. (Council Order No 826 at page 24) This
10 renders the regulation criteria meaningless and is not supportable as a matter of law. If this were
11 the case, a proponent of a cogeneration power facility could site such a facility in GMA
12 designated agricultural lands of long term significance, even if the county has heavy industrial
13 zoned lands suitable for such a project, by simply choosing to lease the agricultural land rather
14 than the industrial land.

15 **The EFSEC Recommendation Conflicts With Initiative 937 And The Interest of the State**

16 EFSEC's recommendation of preemption will override local land use, take up the limited
17 power line capacity in Kittitas County, and export Washington's renewable energy outside of
18 Washington and the Pacific Northwest. There is nothing in the record providing that the power
19 generated by this proposed facility shall be sold to Washington utilities for the use of
20 Washington citizens. The Wild Horse wind farm project, one approved and sited by Kittitas
21 County, was one where the power was assured to be used by a Washington utility (Puget Sound
22 Energy) and, therefore, the power generated would benefit the people of Washington. The
23 record is devoid of any representation or condition that the Kittitas Valley wind farm would be
24 producing power for the benefit of Washington citizens. The absence of such a condition in the
25 record speaks volumes. If an impending sale to California were not the case, the applicant would

1 obviously have come forth and disclosed the Washington buyer because that would have been
2 added reason for approval of their application. This was not done, and that omission adds
3 credence to the rumors that the power will in fact be sold to California. The voters, in passing
4 Initiative 937, are calling for Washington utilities to purchase renewable energy. Allowing the
5 export of this renewable energy contravenes the voter's intent. The applicant may assert that this
6 sort of business dealing is confidential and of no concern to anyone except the contracting
7 parties. The applicant by seeking preemption has, however, made it relevant. The EFSEC
8 requirement that their decisions meet the interest of the State, voter intent in I-937, and the
9 Governor's statements on renewable energy and energy independence for Washington
10 (*Governor's 7/12/2006 speech regarding Wild Horse wind farm and her website regarding her*
11 *energy priorities*) make the destination of renewable energy relevant. By seeking preemption of
12 local land use, the applicant has made the power's destination everyone's business. EFSEC
13 recommendation of preemption contradicts the interest of the State.

14 CONCLUSION

15 The decision of EFSEC ignores GMA planning goals. The applicant has failed to make a
16 good faith effort to resolve non-compliance. The applicant has failed to demonstrate that
17 alternate locations within the County have been reviewed and found unacceptable. The applicant
18 has failed to demonstrate that this project meets the interest of the State. The applicants request
19 for preemption must be denied.

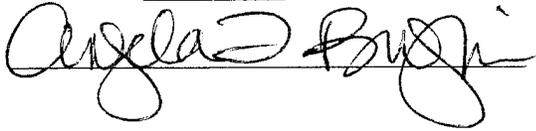
20 Dated this 5th day of April, 2007

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22
23 James E. Hurson WSBA #12686
24 Deputy Prosecutor for
25 Intervener Kittitas County

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22 
23 Neil A. Caulkins WSBA # 31759
24 Deputy Prosecutor for
25 Intervener Kittitas County

1 I hereby certify that I have this day served the foregoing document upon all parties of
2 record in this proceeding, by authorized method of service pursuant to WAC 463-30-120(3).

3 Dated this 5th day of April, 2007.

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