

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of: )  
 Application No. 2003-01 )  
 )  
 SAGEBRUSH POWER PARTNERS, LLC, ) Special Meeting  
 )  
 KITTITAS VALLEY WIND POWER PROJECT ) Pages 1 - 97  
 \_\_\_\_\_ )

A special meeting in the above matter was held in the presence of a court reporter on July 17, 2007, at 3:05 p.m., at Kittitas County Fairgrounds, 512 North Poplar Street, Home Arts Building, in Ellensburg, Washington, before Energy Facility Site Evaluation Councilmembers.

\* \* \* \* \*

The parties were present as follows:

SAGEBRUSH POWER PARTNERS, LLC, Law; Timothy L. McMahan, Attorney at Law; Erin L. Anderson, Attorney at Law, Stole Rives, LLP, 900 Fifth Avenue, Suite 2600, Portland, Oregon 97204.

COUNSEL FOR THE ENVIRONMENT, Michael Tribble, Assistant Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, Washington 98504-0100.

KITTITAS COUNTY, Neil A. Caulkins, Kittitas County Prosecutor, Kittitas County Courthouse, Room 213, Ellensburg, Washington 98926.

Reported by:  
 Shaun Linse, CCR

1     Appearances (cont'd):

2                 RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT),  
3     James C. Carmody, Velikanje, Moore & Shore, P.S., 405 East  
4     Lincoln Avenue, P.O. Box 22550, Yakima, Washington 98907.

5                 F. STEVEN LATHROP, Jeff Slothower, Attorney at  
6     Law; and F. Steven Lathrop, Attorney at Law, Lathrop,  
7     Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh  
8     Avenue, Ellensburg, Washington 98926.

9                 ECONOMIC DEVELOPMENT GROUP,   Debbie Strand,  
10    Executive Director, 1000 Prospect Street, P.O. Box 598,  
11    Ellensburg, Washington 98926.

12                COMMUNITY TRADE AND ECONOMIC DEVELOPMENT, Tony  
13    Usibelli, Assistant Director, Energy Policy Division, P.O.  
14    Box 43173, Olympia, Washington 98504-3173.

15                         \* \* \* \* \*

16                CHAIR LUCE:   Good afternoon.   My name is Jim  
17    Luce.   This is a special meeting of the Washington State  
18    Energy Facility Site Evaluation Council regarding Project  
19    2003-01, the Kittitas Valley Wind Power Project.   We're  
20    here for the sole purpose today of taking comments from  
21    the parties involved in this case on a single issue.   The  
22    single issue is the question of whether additional  
23    setbacks beyond the four times height required for  
24    nonparticipating landowners are achievable upon allowing  
25    this project to remain economically viable.

1                   This question and directed to us to take  
2                   comments on this issue was provided to us by Governor  
3                   Gregoire in a letter of June 22, 2007 to the Council. I  
4                   will in just a moment turn this proceeding over to  
5                   Administrative Law Judge Adam Torem. Prior to doing that  
6                   I would ask the clerk to call the roll, please.

7                   MR. FIKSDAL: Department of Community Trade  
8                   and Economic Development?

9                   MR. FRYHLING: Dick Fryhling is present.

10                  MR. FIKSDAL: Department of Ecology?

11                  MS. ADELSMAN: Hedia Adelsman here.

12                  MR. FIKSDAL: Department of Fish and  
13                  Wildlife?

14                  MS. TOWNE: Chris Towne present.

15                  MR. FIKSDAL: Department of Natural  
16                  Resources?

17                  MS. WILSON: Judy Wilson present.

18                  MR. FIKSDAL: Utilities and Transportation  
19                  Commission? Mr. Sweeney is excused.

20                  And Kittitas County?

21                  MS. JOHNSON: Patti Johnson present.

22                  MR. FIKSDAL: Chair?

23                  CHAIR LUCE: Chair is present.

24                  MR. FIKSDAL: There is a quorum.

25                  CHAIR LUCE: Thank you. I will now turn the

1 proceeding over to Judge Torem, the Administrative Law  
2 Judge for this case.

3 JUDGE TOREM: Thank you, Chairman Luce, and  
4 good afternoon, everybody. As Chairman Luce indicated  
5 we're here for Application 2003-01, and this is the  
6 Kittitas County Wind Power Project and it's Tuesday, July  
7 17, 2007. Now it's about five minutes after three o'clock  
8 in the afternoon, and we're gathered in the Ellensburg  
9 County Fairgrounds.

10 I'm going to ask that the parties present at  
11 least identify themselves for the case so I can know who  
12 is here today and who might not be here.

13 For the Applicant can I see a show?

14 Tim McMahan is here and Erin Anderson it  
15 looks like.

16 MR. McMAHAN: Correct.

17 JUDGE TOREM: And for the County?

18 MR. CAULKINS: Neil Caulkins, Deputy  
19 Prosecutor for the County.

20 JUDGE TOREM: All right. Neil Caulkins, the  
21 Deputy Prosecuting Attorney.

22 Mr. Caulkins, I know we haven't met yet in  
23 person. You're taking over for Jim Hurson; is that  
24 correct?

25 MR. CAULKINS: Yes, Your Honor.

1 JUDGE TOREM: And I also see Darryl Piercy  
2 is with you?

3 MR. PIERCY: Correct.

4 JUDGE TOREM: Excellent.  
5 Counsel for the Environment?

6 MR. TRIBBLE: Mike Tribble present.

7 JUDGE TOREM: Thank you, Mr. Tribble.  
8 Community Trade and Economic Development as  
9 a party in the case?

10 MR. USIBELLI: Tony Usibelli.

11 JUDGE TOREM: Tony Usibelli is here.  
12 And from ROKT, Residents Opposed to Kittitas  
13 Turbines?

14 MR. CARMODY: James Carmody and a number of  
15 members from ROKT.

16 JUDGE TOREM: All right. James Carmody and  
17 a number of others.

18 Mr. Garrett, good afternoon.

19 Steve Lathrop?

20 MR. SLOTHOWER: Jeff Slothower on behalf of  
21 Mr. Lathrop and Mr. Lathrop is here.

22 JUDGE TOREM: All right, Mr. Slothower, good  
23 afternoon.

24 Renewable Northwest Project?

25 Mr. Fiksdal, they sent in a letter; is that

1 correct?

2 MR. FIKSDAL: I believe so, yes.

3 JUDGE TOREM: Is there anybody from RNP?

4 Seeing none, Economic Development Group?

5 MS. STRAND: Debbie Strand.

6 JUDGE TOREM: Debbie Strand. Okay.

7 And I know we had another party, the Sierra  
8 Club, who didn't participate in the adjudication and we  
9 made a note of that in our Order 826.

10 Is anyone from the Sierra Club here today?

11 All right. Seeing none, let me again just  
12 restate what Chairman Luce said maybe in a different focus  
13 as to why we're here today. Everyone certainly has  
14 reviewed the June 22 letter from the Governor and a  
15 variety of you were present either in person or on the  
16 telephone last Tuesday, July 10, at the regular EFSEC  
17 meeting in Olympia when we determined that today was the  
18 day to come over and follow the direction of that letter.

19 The direction came within the statutory  
20 framework of EFSEC from the Revised Code of Washington  
21 (RCW) 80.50.100, Paragraph 2(c) when the Governor had an  
22 option when she received the Council's original order and  
23 recommendation to approve this project and its  
24 accompanying site certification agreement or SCA to as she  
25 can direct the Council to reconsider certain aspects of

1 the Draft Certification Agreement; and it says that the  
2 Council is to reconsider such aspects of the draft  
3 certification by reviewing the existing record or the  
4 application or as necessary by reopening the adjudicative  
5 proceedings for the purposes of receiving additional  
6 evidence.

7 What I tried to make clear last week is  
8 we're not yet certain whether it is necessary to reopen  
9 the adjudicative proceeding; so that's not what is going  
10 on today. Today is simply us having a public meeting,  
11 asking the parties in this case their reaction and  
12 feedback to the letter, and then asking the public later  
13 this evening to help us review the existing record of the  
14 application and determine as the Governor said whether or  
15 not there are any further setbacks achievable.

16 When we looked at Article 1(c))(7) of the  
17 Kittitas Valley Site Certification Agreement, it addressed  
18 simply the turbine setbacks from existing built elements,  
19 and the letter from the Governor addressed not all built  
20 elements but those nonparticipating landowners who are  
21 adjacent to the project.

22 By our count after reviewing the record,  
23 there are 16 different landowners in that category, and  
24 that's the focus of this afternoon's proceeding. What I  
25 want to do is give the parties a chance to tell us their

1 reaction to the Governor's letter and also keep in mind  
2 that there were those two words in there "economic  
3 viability" of the project that the Governor wanted to know  
4 about further setbacks while maintaining the economic  
5 viability.

6 Certainly the Council is aware what its  
7 statutory powers include, and if you look at RCW  
8 80.50.040, Council's power in paragraph 2 involve  
9 developing environmental and ecological guidelines for the  
10 siting of these wind power farms in this case, not an  
11 economic criteria. So we're already strained to the outer  
12 edge of what does economic viability mean and the context  
13 of the environmental and ecological guidelines that have  
14 been established.

15 So I know some of you--actually my initial  
16 reaction to the Governor's letter was to focus on those  
17 two words. Further rereading and rereading again helped  
18 me come to the understanding which the proposed notice was  
19 adopted last week and today's meetings and the focus on  
20 those is not to preserve the economic viability of the  
21 wind farm but to look at these 16 homes and determine what  
22 additional setbacks we can determine based on the record.  
23 If we need to reopen the record, how would we do that.

24 So there's a number of questions out there,  
25 and those are essentially the range we expect to hear

1 today, but the focus will be as I think was made clear  
2 last week on the existing record that will assist us; and  
3 if the existing record is defective in some way, let us  
4 know that so that we can help make that determination if  
5 we're going to take the next step allowed by statute and  
6 reopen the adjudication on this limited issue.

7 All right. Let me turn to the Applicant and  
8 see which of the attorneys will address the Council first.  
9 Again, this is not an adversarial proceeding. It's more  
10 of a conversation and discussion. I'll hear from  
11 Mr. McMahan and then I'll expect to hear from the County  
12 and any other interveners or parties that wish to comment.

13 Tonight for members of the public that are  
14 observing we will begin at 6:30, and I anticipate we'll  
15 give priority to any of the 16 landowners who are here  
16 tonight so that we can hear from them about the individual  
17 impacts on their homes that might be further mitigated and  
18 their opinion and see if we can accommodate that in a  
19 message back to the Governor.

20 The public will have its chance this evening  
21 and we'll have as much discussion this afternoon as we  
22 can.

23 Mr. McMahan.

24 MR. McMAHAN: Good afternoon, Your Honor,  
25 Members of the Council. Welcome back to Ellensburg. I'm

1 going to just make a very short introductory presentation,  
2 and then I will turn the matter over to my colleague,  
3 fellow Stole Rives employee now, Erin Anderson, and she's  
4 going to talk then. I'll just kind of introduce where  
5 she's going and then what I would like to do is come back  
6 after Erin and kind of make some wrap-up comments to try  
7 to put some context around my response in this matter.

8 But before I do that, I just want to  
9 articulate our understanding of kind of the ground rules  
10 here. Yes, this is not an adversarial proceeding, and we  
11 have made lots of efforts here to avoid the pointed kind  
12 of discussion that has characterized this process in the  
13 past, the project in the past, and we're here to base our  
14 presentation on that which has been admitted into the  
15 evidence, has been subject to cross-examination, has met  
16 Washington evidentiary standards. We will do our very  
17 best to adhere to that standard and to not sit here or  
18 stand here and throw bombs at other parties today because  
19 we want to get through this reasonably rapidly and have  
20 the Council and Governor fully understand our position.

21 So with that, I am here again with Erin  
22 Anderson and here with me also are Joy Potter and Dana  
23 Peck who you know are Horizon employees here in  
24 Ellensburg.

25 Just starting out, yeah, interpreting,

1 understanding the Governor's letter has been a real  
2 challenge to us and trying to figure out what we might do  
3 has been a real challenge to us, and I will stand here and  
4 tell you we are very much ill at ease in where we are  
5 right now in this process.

6 A setback condition was established. That  
7 condition was based upon a five- or five-plus year  
8 process. It's based upon a fully complete SEPA  
9 environmental impact statement. It's an objective  
10 standard, it's SEPA based, and it's now under scrutiny in  
11 my view based on subject nonSEPA-based standards and  
12 that's a matter that causes us a great deal of discomfort  
13 at this point.

14 Now, I will talk more later about the  
15 condition itself and try to understand, try to convey what  
16 we believe we might do to try to continue working on  
17 solving the problem that the Governor has identified, but  
18 I want to make very clear for the record our discomfort  
19 where we are right now based upon the fact that this is  
20 indeed a condition adopted based upon a regulatory  
21 standard developed through SEPA.

22 Erin Anderson will get up and present the  
23 history of where we've come to date and where we are today  
24 in terms of where the project is based upon setbacks as  
25 they have developed over time. It's our view for this

1 record to fully capture and for everyone to fully  
2 understand economic viability, what more we could do, it's  
3 really important to convey and understand what has  
4 happened in the project to date to minimize, mitigate, and  
5 avoid impacts.

6 In particular, I'm not sure the Council has  
7 really seen this graphically or has fully had a graph  
8 that's really in focus during the adjudicative hearing.  
9 Erin is going to talk about how the existing setback  
10 condition imposed by the Council has in fact further  
11 reduced the project and helped the 16 landowners involved.  
12 I think it's very important to have a good record; that  
13 we're going to do it based upon the evidence admitted in  
14 the record.

15 So this is already a heavily compromised  
16 project. It's compromised to minimize the impacts. It's  
17 been compromised through the initial design phase. It was  
18 compromised through the hearings process, and it's been  
19 further compromised as a result of EFSEC's proposed  
20 condition, and we do have a couple of ideas of how it  
21 might be further compromised to address the Governor's  
22 concerns.

23 So with that, I would just like Ms. Anderson  
24 to talk to you for a bit and then I'll get up and I  
25 promise to keep my closing remarks very brief. Thank you.

1 MS. ANDERSON: Thank you, Your Honor,  
2 Mr. Chair, and Councilmembers. Erin Anderson with Stole  
3 Rives, also 360 Willowbrook Lane here in Ellensburg. I  
4 remain an Ellensburg resident. I too will make all my  
5 comments within the confines of the record or call out to  
6 facts within the record, and to the extent that I can cite  
7 to the exact location in the record that is my intention.  
8 I too am cognizant that we are still in an administrative  
9 proceedings process and intend to keep my comments to that  
10 so that we don't exceed the scope of that and hope that  
11 everybody does today for ease of reviewing in the future  
12 where we went today.

13 As the Council knows all of the  
14 environmental analysis that was done on this proposed  
15 project assumes the worst-case scenario on turbines. That  
16 is 3 megawatts, 410 feet. So all of the evidence that you  
17 saw during the many years you've been looking at this, as  
18 well as in the adjudicative process last September assumed  
19 a worst-case scenario.

20 Now, Judge Torem when he opened the  
21 proceedings referenced as did Chairman Luce this is a 2003  
22 proceeding. That's because the initial application was  
23 submitted in January of 2003, and we are still within that  
24 proceeding today. The application that was submitted to  
25 EFSEC in 2003 proposed 120 turbines with 1,000-foot

1 setback. The parties went through public process. There  
2 were comments made. Other processes took precedence  
3 during those many years. It's been a long time. And in  
4 2005 there still hadn't been a decision but Applicant  
5 Horizon resolved that they wished to try again with  
6 Kittitas County notwithstanding that they had filed a  
7 preemption request.

8 At Kittitas County and the Council's request  
9 Horizon withdrew that initial preemption request and went  
10 back to the drawing board. They didn't go back to the  
11 drawing board in a vacuum. By that point they had two  
12 years of comment. They went back, took a look at the  
13 application for site certificate that was initially  
14 submitted, took a look at the draft environmental  
15 statement that had already been prepared, there again 120  
16 turbines at 1,000 feet worst-case scenario three  
17 megawatts, took a look at the public comment that had been  
18 developed over those two years, decided it would try again  
19 with the County. Did withdraw the application and  
20 resubmit it. Did withdraw the application for preemption  
21 and resubmit it to Kittitas County.

22 If anybody wants to follow along, all of  
23 this information can be found in the prefiled supplemental  
24 testimony of Chris Taylor. His comments along these lines  
25 again at approximately page 9. He also has supplemental

1        rebuttal testimony that's also in the record should you  
2        wish to follow along.

3                    At the time Mr. Taylor's company resubmitted  
4        in 2005 they significantly reduced the project in effort  
5        to remove wind turbine generators in areas that had been  
6        discovered through the public process to be a particular  
7        visual sensitivity. At that point we proposed a project  
8        for 65 to 80 turbines. Already that is a one-third  
9        reduction in the application that was submitted in 2003,  
10       and the application requested as is industry standard  
11       approval of micro siting corridors.

12                   These are corridors within which turbines  
13       get placed as the Council knows, as the County knows  
14       because they've gone through the same process on other  
15       projects. You don't do full engineering on these projects  
16       prior to submitting the application. You do them within  
17       the confines if you get a site certificate, within the  
18       criteria of the site certificate.

19                   They sought approval of particular  
20       corridors. Within those corridors they proposed to  
21       install 65 to 80 turbines depending upon among other  
22       things the size of the turbine that is ultimately  
23       selected. I'm going to put up a visual that is in your  
24       record that shows the very first reduction that this  
25       applicant made to this Council to reduce the visual

1 impacts, if you will, of this project.

2 JUDGE TOREM: Ms. Anderson, can you turn  
3 that sideways so the audience can see it too?

4 MS. ANDERSON: I certainly can. We also had  
5 this up at the time of the adjudicative hearings. The  
6 blue dots and the red X's represent the first application  
7 to the Council in 2003. The red X's are the turbines that  
8 were eliminated based upon review of the Draft  
9 Environmental Impact Statement and the public comments  
10 between 2003 and 2005. That is a one-third reduction in  
11 the process right off the bat.

12 The impacts just from what you see on that  
13 chart landowners lose royalties. When we talk about  
14 affected landowner, you cannot discount the fact that all  
15 of those red Xs represented revenue to other adjacent  
16 landowners. They've all lost that revenue as a result of  
17 this reduction to the project. Likewise Kittitas County  
18 lost revenue by the reduction of the project. Junior  
19 taxing districts lose money as a result of the reduction.  
20 School voted upon indebtedness which is always a fixed  
21 amount when we run a levy amount can no longer spread  
22 along such a large tax base that otherwise generates  
23 savings to the individual taxpayer when you have fixed  
24 amounts voted upon. The Department of Natural Resources  
25 was a landowner. DNR is charged to raise revenues that

1 fund the state school trust.

2 In response to public concerns Horizon  
3 reduced the size of this project, reduced the money that  
4 goes to the school children of the state of Washington in  
5 order to mitigate the concerns expressed in the first two  
6 years of the adjudication. Not withstanding that, and  
7 again following along in Mr. Taylor's testimony, Horizon  
8 understood staff to suggest that rather than a range of 65  
9 to 80 turbines within corridors, as is the industry  
10 standard, they wanted a cap. You heard this testimony in  
11 September. Horizon then agreed to definitively cap it at  
12 65, no more.

13 After agreeing voluntarily to impose a  
14 maximum of 65 turbines, again in Mr. Taylor's testimony on  
15 page 14, it was quite clear during the process at the  
16 County level that the initial 1,000-foot setback that is  
17 the industry standard was not satisfactory to the  
18 County--they do not have a standard--asked the Applicant  
19 to of its own volition increase that setback.

20 Dana Peck who is the project manager for  
21 this process orally offered that to Kittitas County  
22 Community Development Director Darryl Piercy. That too is  
23 in Mr. Taylor's testimony. After that where he proposed  
24 to move the setbacks to 1,250, feet, which was a 25  
25 percent increase in setbacks, Horizon went back and

1 analyzed this even further and resolved that they would  
2 make a one-third increase to the original setback and push  
3 this up to a quarter mile, 1,320 feet, if you will, where  
4 Horizon found themselves at that point was having cut the  
5 turbine numbers nearly in half from 2003 to 2006 and  
6 through a variety of steps increased the setback from  
7 1,000 feet to 1,320.

8 Notwithstanding those steps, Kittitas  
9 County ultimately resolved that they'd only be satisfied  
10 with a 2,500-foot setback. That is not the setback  
11 analyzed in the draft or final environmental impact  
12 statement. That is based upon their various visual  
13 observations. I am going to put up a second map.

14 JUDGE TOREM: Ms. Anderson, the project that  
15 we ultimately reviewed in September was the 65 turbine cap  
16 with a 1,320 feet setback. That's what was recommended  
17 when we started.

18 MS. ANDERSON: That is what we were  
19 requesting. That's correct.

20 JUDGE TOREM: All right. I just want folks  
21 to be clear as to what all went before EFSEC and then what  
22 EFSEC did from there.

23 MS. ANDERSON: A great line of demarcation.  
24 When it left the County process, it went to adjudicative  
25 proceedings. The Applicant was asking for a maximum of 65

1 at 1,320 to this Council. The County had insisted on  
2 2,500. Also I am going to put up--

3 CHAIR LUCE: Ms. Anderson, excuse me just a  
4 moment.

5 MS. ANDERSON: Certainly.

6 CHAIR LUCE: You said the county resolved  
7 2,500 feet?

8 MS. ANDERSON: They wanted the Applicant to  
9 agree to 2,500 feet, and I may misspeak because I was not  
10 at the ultimate hearing at the County process.

11 CHAIR LUCE: Do you have a record citing?  
12 That would be helpful; otherwise, just move on.

13 MS. ANDERSON: Oh, I do. I do. It is 2,500  
14 from nonparticipating landowners.

15 JUDGE TOREM: Do you have a cite from the  
16 record?

17 MS. ANDERSON: I will go get it. I have a  
18 board that I'm going to put up that shows all of this, and  
19 I'll get that for you, the cite for the record right now.

20 CHAIR LUCE: Thank you.

21 MS. ANDERSON: This map was attached to a  
22 letter that I submitted to Kittitas County, hand delivered  
23 to the County on May 15 of 2006. It is attached to that  
24 letter. For purposes of getting my comments in the  
25 record, I will come back to that. I will get you that

1 cite, sir.

2 The green bubbles show a 2,500 foot setback  
3 from the nonparticipating landowners in this project. I'm  
4 going to keep that up there for a minute.

5 At 2,500 feet tax revenues are cut in half.  
6 Locally economic development dollars are disappearing  
7 rapidly. One-third of all landowners lose all turbines on  
8 their property. One-third of all of them that would have  
9 participated are now shut out. The wind turbines go down  
10 in number, but the fixed cost of this project remain the  
11 same. So as you have smaller numbers of turbines and the  
12 same amount of fixed costs the carrying cost per turbine  
13 for a fixed cost necessarily goes up. So you have  
14 negative financial impacts to the community, to the  
15 landowners, and to the company. Everybody is taking a hit  
16 here.

17 With that in mind, we proceed to EFSEC.  
18 After multiple days of adjudicative hearings and  
19 additional questions by the Council, cross-examination by  
20 the parties, the Council issues a recommendation based  
21 upon a quantifiable formula that is subject to  
22 verification and environmental review, and that is four  
23 times tip height. Because the Applicant has always used  
24 the largest worst-case scenario turbines we assume that  
25 four times tip height at 410 is 1,640 feet, and our visual

1 expert Tom Priestley in his prefiled testimony prepared a  
2 particular map that is included in his testimony between  
3 pages 6 and 10-1/2 that shows within that project site  
4 where the 16 nonparticipating structures are.

5 And I'm going to put that up. It is in  
6 Mr. Priestley's testimony that that 1,640 setback is going  
7 to impose additional impacts to this project.

8 JUDGE TOREM: On the map you've currently  
9 got showing from May 15 of last year, do you have a count  
10 for the number of turbines that are eliminated by the  
11 2,500-foot setback?

12 MS. ANDERSON: I'm going to put that on  
13 Mr. Priestley's map because he numbers the houses. It  
14 would be difficult to put houses on this map. That map  
15 was submitted with Mr. Priestley's. He's better at visual  
16 than I am. To answer that question, I'm going to put  
17 Mr. Priestley's map up that you had last September.

18 This is the map that Mr. Priestley included.  
19 That is the layout that the Applicant went to EFSEC  
20 adjudicative proceedings asking for. It includes the 16  
21 nonparticipating landowners and I've blown it up as large  
22 as I can. Number one is up here all the way down to  
23 number 16 over here. What I have below is the summary in  
24 Mr. Priestley's testimony of the distances between those  
25 16 and the turbines as submitted.

1           Your Honor, I believe that's what you were  
2 looking for. This is up to 65 but not to exceed that the  
3 Applicant sought to have approved by EFSEC at 1,320 feet.

4           At 1,640 feet the condition imposed by the  
5 Council four times tip height using the Mr. Priestley's  
6 information we lose yet more turbines beyond the 65. I'm  
7 going to have Joy Potter who is the local project manger  
8 read to me those turbines that are eliminated simply  
9 because they are closer than 1,640 feet.

10           MS. POTTER: H-1.

11           MS. ANDERSON: It eliminates this one here.

12           MR. SLOTHOWER: Your Honor, may I ask a  
13 question? I'm a little bit confused on whether what she's  
14 reading from is in the record.

15           MS. ANDERSON: It is on pages 7 to 10 of Tom  
16 Priestley's prefiled supplemental testimony.

17           JUDGE TOREM: I'm familiar with all the  
18 documents she's referring to have been in the record thus  
19 far. The Council did some of its own calculations, but we  
20 don't have access to what the interpretation of these  
21 numbers is by the Applicant. Part of the calculation that  
22 the Council recommended is 1,640 feet did look at this  
23 map, did look at the previous map with the X's on it to  
24 try to based on scale calculate which turbines would be  
25 eliminated. So I think the Council while they didn't

1 state that in the order has somewhat gone through this  
2 before but in a deliberative process.

3 MR. SLOTHOWER: I understand that and I do  
4 understand the maps are in the record. I just was not  
5 clear on what Ms. Potter was reading from.

6 JUDGE TOREM: My indication is that she's  
7 reading from Mr. Priestley's testimony table that runs  
8 from page 8 to page 10 of that testimony, and there are  
9 turbine numbers in the different strings labeled in the  
10 first column of the table, and I think all she's doing is  
11 any number in the second column with the approximate  
12 distance that's equal to or less than 1,640 are being  
13 eliminated.

14 Is that correct, Ms. Potter?

15 MS. POTTER: Yes.

16 JUDGE TOREM: So that's just an  
17 interpretation again of that table now back into a  
18 graphical form.

19 MR. SLOTHOWER: I guess I'm still unclear as  
20 to whether we're headed into new evidence because it's  
21 their interpretation of which ones are eliminated based  
22 upon your site certification order.

23 JUDGE TOREM: What I think it is, is that  
24 Mr. Priestley did this measurement as to approximate  
25 distance from the home to the turbine, and so the evidence

1 is simply she's making a record for us now as to what's  
2 already in the record and circling essentially for the  
3 Council and for everybody else any turbines that's 1,640  
4 feet or less from those 16 residences. So all we're doing  
5 is polling, call it an excerpt of the record again but in  
6 graphical form.

7 MS. ANDERSON: May I proceed, Your Honor?

8 JUDGE TOREM: I want to make sure  
9 Mr. Slothower and his client--

10 MR. SLOTHOWER: Well, I'm not sure that I  
11 agree, but I understand the Council's position and for the  
12 record I would like to object to it.

13 JUDGE TOREM: All right. We'll note the  
14 objection, and again, because this isn't an adjudicative  
15 process I'm not going to rule on it, but it will be noted  
16 and made a part of the court reporter's transcript.

17 MR. SLOTHOWER: Right. I understand that.  
18 I guess my concern is that under the rules you laid out  
19 when you started you were very clear we weren't going  
20 outside the record.

21 JUDGE TOREM: Mr. Slothower, I made it clear  
22 we're not outside the record. I could stand up and do  
23 this myself. We did something similar to this in  
24 deliberations. All we did was look at the record and  
25 digest it, and what she's doing now is digesting it on

1       behalf of everybody present. If they want to make an  
2       interpretation, again we have to make a recommendation  
3       back to the Governor based on the existing record. I'm  
4       aware of that. And if I think that she's straying outside  
5       or stretching some interpretation by giving us further  
6       argument on what's not in the record, we can't consider it  
7       and I'll ask her to stop. Thus far the Applicant is  
8       paralleling the same thought process that this Council  
9       honestly went through back in October and November and  
10      December in digesting all of this and sorting out what's  
11      the impact if we go beyond the 1,320-foot setback that was  
12      recommended to us in the application that was ultimately  
13      before the Council in September.

14               MR. SLOTHOWER: Okay.

15               JUDGE TOREM: Go ahead, Ms. Anderson.

16               MS. ANDERSON: Thank you, Your Honor. The  
17      second turbine, Ms. Potter?

18               MS. POTTER: A-1, E-3.

19               MS. ANDERSON: E-3.

20               MS. POTTER: J-5.

21               MS. ANDERSON: J-5.

22               MS. POTTER: J-6.

23               MS. ANDERSON: J-6.

24               MS. POTTER: I-14.

25               MS. ANDERSON: Is that Bingo? I-14.

1 MS. POTTER: J-3.

2 MS. ANDERSON: J-3.

3 MS. POTTER: J-4.

4 MS. ANDERSON: And J-4.

5 MS. POTTER: And that's all.

6 MS. ANDERSON: Based upon the Council's  
7 recommendation following the adjudicative proceedings  
8 utilizing bear in mind this is Mr. Priestley's map that's  
9 in the record--in effort not no stray from the record I'm  
10 I am using this map--at 1,640 up to additional turbines  
11 are lost from the 65 that were sought in the initial  
12 application. At 2,500 feet I'm going to X those out that  
13 the Council requests. There's your bubbles again. We'd  
14 lose yet more.

15 Go ahead.

16 MS. POTTER: For the 2,500?

17 MS. ANDERSON: Yes.

18 JUDGE TOREM: This is the same numbers from  
19 the same chart from Mr. Priestley?

20 MS. ANDERSON: That is correct. I'm going  
21 to stay on the map.

22 MS. POTTER: H-2.

23 MS. ANDERSON: H-2.

24 MS. POTTER: G-2.

25 MS. ANDERSON: G-2.

1 MS. POTTER: Mr. McMahan would like me to  
2 circle the 2,500 ones. Good point.

3 Go ahead.

4 MS. POTTER: F-1.

5 MS. ANDERSON: F-1.

6 MS. POTTER: F-2.

7 MS. ANDERSON: F-2.

8 MS. POTTER: F-3, F-4, F-5, A-2, B-5, B-6,  
9 B-7, H-10, I-16, E-3, E-4.

10 MS. ANDERSON: That one was 2,500 from  
11 several homes. I'll circle it twice.

12 MS. POTTER: I-15. I-13, if you've already  
13 got that one.

14 MS. ANDERSON: No.

15 MS. POTTER: I-14 I believe you already have  
16 X-d out. I think that is all of them.

17 MS. ANDERSON: By my very short count that  
18 removes an additional 24 turbines off of Mr. Priestley's  
19 map. That would to go 25.

20 JUDGE TOREM: Total number?

21 MS. ANDERSON: So there were eight that you  
22 counted eliminated by the Council's recommendation to the  
23 Governor.

24 MS. ANDERSON: Correct.

25 JUDGE TOREM: And based on the discussion of

1 2,500 feet at the Board of County Commissioners saying  
2 there are an additional 16 lost if you stretch the setback  
3 to that number.

4 MS. ANDERSON: That is correct. I'm going  
5 to put a little key down here so that anybody looking at  
6 this knows which is which. I won't win awards for  
7 penmanship.

8 JUDGE TOREM: Ms. Anderson, one other  
9 question about this map that came up. In the Council's  
10 count the project was requesting up to 65 turbines.

11 MS. ANDERSON: That is correct.

12 JUDGE TOREM: If I recall between this map  
13 and one other that Mr. Priestley had we never got a count  
14 of 65 but only 63 or 64.

15 MS. ANDERSON: That's correct.

16 JUDGE TOREM: Do you know how many proposed  
17 turbines are illustrated on this map from page 7 of  
18 Mr. Priestley's supplemental testimony, 63 or 64?

19 MS. ANDERSON: That question what I would  
20 like to do I'll let Mr. McMahan wrap up his conclusion  
21 comments, talk to Ms. Potter. She's far more conversant  
22 with the record than I am rather than give you incorrect  
23 information.

24 JUDGE TOREM: All right. They're counting  
25 for you. Sixty-three.

1 MS. ANDERSON: Sixty-three, yes.

2 My point in this exercise, which is all in  
3 the record and you have asked us to comment to the  
4 Governor's question based upon the record, is to  
5 demonstrate for you how far this project has come prior to  
6 even reaching her. It went from 120 per the Applicant's  
7 desire down to 65 to 80 in further efforts to accommodate  
8 public concerns, to a cap of 65 based on conversations  
9 they had with County representatives to a setback now of  
10 four times tip height from the Council which is  
11 represented in the Xs there which further diminishes this  
12 project, and yet the County still wants the 2,500-foot  
13 setback. I think that is the range that you are looking  
14 for, but it felt imperative to me that everybody has a  
15 visual.

16 Rather than coming to EFSEC last September  
17 with 120 and having you cut it to 63 with the 1,640 foot  
18 which would be a significant, significant action on the  
19 application this is what the Applicant has done to date to  
20 get this project before you.

21 I'm going to turn that back to Mr. McMahan  
22 for some closing comments. Insofar as the economic  
23 impacts I think it's clear the loss of every additional  
24 turbine is going to visit significant ongoing financial  
25 impacts to everybody: participating landowners, the

1 County, this project, which becomes less salable as  
2 Mr. Taylor indicated to you. It becomes less desirable  
3 the smaller it is because it does carry significant  
4 carrying costs due to the higher interconnector cost on  
5 this project. It has, if you will, been unfairly misread.  
6 Thank you.

7 MR. McMAHAN: Thank you, Members of the  
8 Council. The citation you were looking for it's  
9 Resolution 2006-90 Board of County Commissioners  
10 Resolution Finding No. 40. It's attached as an appendix  
11 to our opening brief. It states that a minimum of a  
12 2,500-foot setback would be necessary to reduce visual  
13 impacts to a minimum level in the Board of County  
14 Commissioners and all that is discussed in painful detail  
15 at pages 36 through 39 of our opening brief.

16 CHAIR LUCE: Thank you.

17 MR. McMAHAN: Let me just kind of wrap up  
18 with a few points. I'm going to discuss precedent and  
19 policy in just a minute, but I guess the first question of  
20 precedent right out of the box and Ms. Anderson referred  
21 to it is: Is it a good idea for an energy facility  
22 developer to come to EFSEC having already through design  
23 efforts and working through public process to have a  
24 minimized project to one half of its former self right at  
25 the outset in the application or is it a better idea to

1 pack as many elements of a project in to come in and wait  
2 at the end of the day for it to be mitigated or minimized  
3 through conditions?

4 That's the spot we're in here. I think that  
5 had we come in with 120 in the prior project areas that  
6 you've seen here and EFSEC had imposed conditions that had  
7 made it a 63 or fewer may account for the 1,640-foot  
8 setback turbines I think probably the Governor would have  
9 declared victory and said that's a heavily reduced project  
10 and it looks like the siting Council's recommending very  
11 steep reductions in conditions, and I am not so sure we  
12 would even be here today having this discussion. So is  
13 that the precedence we really want in this state in  
14 applying for projects through EFSEC?

15 Second, this is a SEPA-based condition.  
16 There's a fundamental dispute that's been running in this  
17 whole case regarding jurisdiction of authority of EFSEC  
18 versus the County. In my view that's still running  
19 through this discussion here: What is the authority of  
20 EFSEC vis-a-vis local government? It's very unfortunate  
21 that it's cast in this way. I think it's a very  
22 unpleasant and unfortunate thing for the future of EFSEC  
23 that that's where we are.

24 But I want to just translate this into  
25 something I think local government is quite familiar with.

1 Now, Mr. Piercy is a very skilled planner. There are a  
2 lot of skilled planners around the state, and if a local  
3 government developed a setback standard let's say from a  
4 stream corridor. Let's say you have a high-tech facility  
5 being proposed next to a stream corridor, salmon bearing  
6 stream corridor, and if during regulatory review you end  
7 up with say a 100-foot setback or 150-foot setback from a  
8 stream corridor. And then if project opponents,  
9 environmental community neighbors don't like that setback,  
10 would it be appropriate even for a local government then  
11 after that level of environmental regulatory review to  
12 say, "You know, you need to show us the economic viability  
13 of this project, why we shouldn't do more than we've just  
14 done to you as a SEPA condition under the EIS. Why  
15 shouldn't this be 300 feet?"

16 Now, local government understands that that  
17 invokes real big issues under the Vested Rights Doctrine,  
18 under the limitations under SEPA, and the fact under  
19 substantive due process at a local level. And I don't  
20 think people really understood in this case the parallel  
21 here under any other permitting process to why that kind  
22 of a question is a really uncomfortable thing to ask an  
23 applicant and runs afoul of a very deep level of law in  
24 the State of Washington.

25 So what more could the project do to further

1 reduce or minimize impacts? We have stated and I'm just  
2 going to cite to you page 42 of our closing prehearing  
3 brief. We stated that Horizon has operated in good faith  
4 in an effort to resolve issues throughout the case.  
5 Horizon has reduced this project. We have worked with  
6 landowners and done landowner agreements that's documented  
7 in the record. It's stated in our brief. And this brief  
8 also states that Horizon's intent is to continue working  
9 with the County, continue working with local landowners to  
10 continue to try to address these issues as we move forward  
11 with the project.

12 As Ms. Anderson alluded to we are heading  
13 into a micrositing process, assuming this project is  
14 approved, and as part of micrositing the developer has to  
15 ask a whole lot of questions, including can we minimize  
16 impacts on the environment, can we minimize impacts on  
17 water bodies, can we construct the project in a feasible  
18 way that maximizes the wind potential that deals with  
19 geotechnical concerns, all host of engineering and  
20 environmental issues that are detailed in the Chris Taylor  
21 testimony you have in front of you. And I think it would  
22 be a fair thing to have as one of those criteria can we  
23 maximize distances from residences as part of the  
24 micrositing process.

25 And I think that is an appropriate thing for

1 us to continue to do. I think it's consistent with the  
2 legal position and the factual position we had in this  
3 case, and it is certainly something that we, that the  
4 Applicant, would continue to do going forward, and I think  
5 we're confident that we would see increased setbacks. But  
6 it needs to be factored into those other criteria to make  
7 sure that the project is constructible on the ground based  
8 upon micrositing criteria.

9 So I want to talk just for a minute about  
10 present and policy and where we are right now. In the  
11 last I don't know 8 or 9 months the State of Washington  
12 has been very, very busy in climate change policy and  
13 legislation. The voters as well as you know enacted or  
14 adopted Initiative 937, and the legislature just recently  
15 approved Senate Bill 6001 and the Governor herself  
16 announced a very aggressive energy policy all aimed at  
17 reducing greenhouse gas emissions in the State of  
18 Washington. This is a very credibly aggressive series of  
19 policies and they are not self-executing.

20 To encourage investment in the billions of  
21 dollars that we need to implement these policies it  
22 requires a predictable objective permitting venue and  
23 process. Now, this is not just about the Kittitas Valley  
24 Wind Power Project. We stand today literally at ground  
25 zero frankly in whether this state really means that in

1 terms of implementing the climate change policy the voters  
2 have adopted and that the legislature has adopted and that  
3 the Governor has called out. Will we or will we not  
4 pursue the climate change that's been announced by the  
5 state?

6 Again, it's not just about the KV project.  
7 It's about the kind of permitting venue that we establish  
8 to allow developers to invest billions to implement it.  
9 Not just about wind energy facilities too. It's about  
10 innovative generation facilities that take advantage of  
11 cutting edge technology, technology including CO2  
12 sequestration and are you willing as a stakeholder to  
13 really encourage that level of investment?

14 In our closing brief we warned of the  
15 chilling affects that a process can have if it doesn't  
16 comport with adopted law and policy, and I believe that  
17 this question is live and real in front of you today with  
18 the action that we take in this case.

19 Finally, I think all this boils down to a  
20 really simple fundamental issue under the EFSEC siting  
21 statute 80.50, and that is this: Does the siting statute  
22 require the state to provide the minimum necessary  
23 generation power in balancing environmental factors or the  
24 maximum level of electrical generation in balancing  
25 environmental factors and criteria? So I ask you that.

1           It is my view that the statute is clear that  
2           it encourages a maximum development of energy generation  
3           in that process and this has been flipped now on asking  
4           what is the minimum, minimum, absolute minimum generation  
5           capable of being generated from this project and perhaps  
6           others in the future upon a subjective balancing  
7           environmental criteria. So that's the end of our  
8           presentation.

9           JUDGE TOREM: Well, not quite.

10          MR. McMAHAN: Okay. Happy to answer  
11          questions.

12          JUDGE TOREM: You made a reference to a  
13          comparison based on vested rights. Is there articulation  
14          today or research that as an applicant before EFSEC  
15          sufficient you have any vested right to anything?

16          MR. McMAHAN: No, I'm not stating that.  
17          What I wanted to do is draw a parallel that has policy  
18          ramifications. In the Vested Rights Doctrine is a very,  
19          very key element of Washington land use law that--

20          JUDGE TOREM: Well, again, let me stop you.  
21          I'm much more familiar with this than I need to be and  
22          more. My understanding is that if there are codes adopted  
23          and you file an application with the code in existence  
24          you're entitled to get the benefit of that code, and in  
25          this county there is no such code.

1 MR. McMAHAN: That is correct.

2 JUDGE TOREM: And EFSEC has no code adopted.

3 MR. McMAHAN: Right.

4 JUDGE TOREM: So neither the County nor  
5 EFSEC guarantees you anything.

6 MR. McMAHAN: Right. Yep. But if an  
7 environmental impact statement, the environmental document  
8 develops through regulatory review for environmental  
9 review a particular standard it's based upon the record in  
10 the proceeding. What opportunity then is there to say  
11 show us economic viability reasons why you should not go  
12 further?

13 JUDGE TOREM: Well, if there were a code  
14 adopted either by EFSEC or by the County in which the  
15 project is to be built, there certainly would be items  
16 where you get an exception or variance to that. And  
17 certainly if the County had adopted 2,000 feet or 2,500  
18 feet, then maybe a variance was allowable for some of  
19 these turbines that might be 2,200 feet and shielded by  
20 topography or otherwise.

21 EFSEC has had difficult deliberations as to  
22 what to do with the objective evidence in the record and  
23 in places where a turbine might be in one case four times  
24 the height but in other places could easily be five times  
25 the height what's the way to articulate one size fits all

1 standard when the record itself clearly does not have  
2 driveway, doorway photographs and evidence from each of  
3 these 16 homes. Nobody brought that previously. There  
4 was some question as to landowner cooperation. There was  
5 some question just as to effort made by either side. We  
6 didn't have that and unless we reopen the adjudication we  
7 won't and that's the basis of the standard that was  
8 articulated by the Council doing the best it could with  
9 the evidence in the record.

10 So what you're talking about, Mr. McMahan,  
11 with all due respect are land use codes that have been  
12 developed much farther than what we had to deal with in  
13 this case. So I just wanted to make it clear today that  
14 if the Applicant was asserting vested right we know what  
15 it is.

16 MR. McMAHAN: No, we are not asserting a  
17 vested right. I was trying to draw parallel for the  
18 government. Prior to regulatory reform, prior to--I don't  
19 want to get too deep into this--but prior to adoption of  
20 local critical areas setbacks were often adopted and  
21 developed through environmental review. So it would be a  
22 stream corridor setback, for example. It would not have  
23 been uncommon prior to adoption of critical areas  
24 ordinance to have reviewed and adopted those standards  
25 with a SEPA document.

1           What I am suggesting is to go back later and  
2 suggest that an applicant do more in demonstrating why a  
3 project would be economically unviable, not to do more  
4 outside of that process is a very difficult question to  
5 ask an applicant.

6           JUDGE TOREM: I think the Governor  
7 recognized all the policies and all the politics that have  
8 gone on in the last several years. The record in this  
9 case which opened well before I-937 became an issue was  
10 not allowed to become per se a driving issue in this case.  
11 We talked about all those factors. They were weighed out  
12 when the council came up with this action which today I  
13 think the Council agreed reduced the number of turbines  
14 from 63 to 55 or 64 to 56. I'm still getting the  
15 Councilmembers telling me we're not sure, but there's  
16 another map, Figure 2-1, that have the 64 turbines. This  
17 one very well may have 63. The Council wrestled with that  
18 in its deliberations: What were you asking for? We'd  
19 gotten an upper range and plus or minus one. We decided  
20 you'll figure it out.

21           MR. McMAHAN: Right. This is physics based.

22           JUDGE TOREM: Tell me then in the  
23 micro siting if the Applicant is ready in what way. I just  
24 went through the site certification agreement and nothing  
25 is leaping out at me that says in micro siting we work and

1 do exactly what you said that occurred in the Wild Horse  
2 project, to site each turbine a little bit depending on  
3 once you got out to that piece of ground was the slope  
4 wrong, was something else, whatever, we could do other  
5 environmental mitigation factors. Is the applicant  
6 committed to working with EFSEC staff to say here's where  
7 1,640 is assuming you're working with three megawatt  
8 turbines? Is there any difference between pushing it  
9 back? Where's the window? Can we lengthen it with this  
10 affected homeowner? I believe that's the tenor of the  
11 Governor's letter.

12 MR. McMAHAN: Right.

13 JUDGE TOREM: It may be that the Governor is  
14 asking us to show is there one or two particular turbines  
15 that need to be lopped off after further consideration?  
16 Council has to wrestle with that same factor that you're  
17 addressing today. But if the Applicant can come to us.  
18 I'm not asking for a sacrificial turbine. I'm asking  
19 simply for an approach in the micrositing and language  
20 that would be binding on the applicant given further  
21 discretion to EFSEC that when it's weighing the factors of  
22 micrositing that EFSEC, the on-the-ground manager, be able  
23 to prioritize that particular visual setback, which  
24 apparently caught the Governor's eye; and she recognizes  
25 if this is going to go in and you can do it with more

1 sensitivity to these 16 landowners, then that's what she  
2 wants to do. That's my reading of the letter.

3 MR. McMAHAN: And that's what we're  
4 suggesting we can do.

5 JUDGE TOREM: How can you articulate that  
6 and where? I mean I can put that in another further order  
7 to the Governor, if that's what the Council wants to do.  
8 Do I need to add something to Article 1(c)(7) of the  
9 turbine setback or could you find other language that I  
10 have not seen?

11 MR. McMAHAN: No, and that's my point. What  
12 I'm trying to do is keep this within the confines of the  
13 record here. Chris Taylor's testimony I think his first  
14 rebuttal testimony that we've submitted to you talks about  
15 micrositing factors and those factors are involved in  
16 micrositing. So in terms of the record you have and what  
17 micrositing is, how it's anticipated to be implemented  
18 consistent with the Wild Horse case it is in there.

19 The site certificate itself does not have an  
20 adequate discussion on this point so I think do further  
21 work on a condition so I suggested that as a path and  
22 avenue. If we can work with EFSEC staff, we're happy to  
23 do that and I think that we can. I believe very strongly  
24 that we can end up with greater setbacks balancing those  
25 factors. But it is a little bit of a complicated test in

1 dealing with the other engineering and technical  
2 environmental factors balancing. This went along with  
3 them.

4 JUDGE TOREM: I know that the 2,500-foot  
5 setback when you were before the Board of County  
6 Commissioners Chris Taylor's testimony caused a lot of  
7 disconnect with the rest of the County in question in  
8 which the Applicant negotiated, simply said that makes the  
9 project nonviable.

10 MR. McMAHAN: Right.

11 JUDGE TOREM: You're still here today  
12 arguing for this to go back and forward. So clearly what  
13 EFSEC has done may have trimmed some dollars one way or  
14 the other as Ms. Anderson pointed out, but the project  
15 would you say it remains economically viable?

16 MR. McMAHAN: The project is proceeding with  
17 the EFSEC condition, correct. In what Mr. Taylor said if  
18 County Commissioners are saying 2,500 feet is a standard  
19 that renders the project inviable and based upon that  
20 statement the County denied the project.

21 JUDGE TOREM: I don't expect that you're  
22 going to tell me the number but somewhere between 39 and  
23 55 turbines the economic viability must take a turn for  
24 the worst.

25 MR. McMAHAN: You're right. I can't tell

1 you the number, especially with the record we have and the  
2 kind of framework that you articulate here.

3 JUDGE TOREM: That's not a question.

4 MR. McMAHAN: But if this is about--if we  
5 can steer this in the direction of micrositing, it does  
6 provide us an opportunity in engineering the project and  
7 working with EFSEC staff to maintain as many as the  
8 Applicant can while addressing a question that the  
9 Governor has asked us to address.

10 CHAIR LUCE: Mr. McMahan, I think you would  
11 agree based on your previous experience with EFSEC that  
12 EFSEC has the final say, the final approval of siting of  
13 any facility subsequent to final engineering and planning.

14 MR. McMAHAN: Correct.

15 CHAIR LUCE: I think that it's kind of got  
16 to come back to us before it's finally approved and before  
17 the concrete is poured and dried.

18 MR. McMAHAN: Yep, that's right.

19 CHAIR LUCE: And what you're saying, if I  
20 hear you correctly, is you will be very attentive to view  
21 shed and line of site in that process.

22 MR. McMAHAN: Correct.

23 CHAIR LUCE: And that you may have some  
24 additional language that you suggest.

25 MR. McMAHAN: And we encourage that the

1 Council address the condition if the Council feels that's  
2 appropriate.

3 CHAIR LUCE: Thank you.

4 JUDGE TOREM: All right. Thank you very  
5 much.

6 MR. McMAHAN: Thank you. Sorry for taking  
7 quite so much time.

8 JUDGE TOREM: Mr. Fryhling.

9 MR. FRYHLING: Judge Torem, I have a couple  
10 of questions. Maybe it requires that we reopen this  
11 adjudication. But I just want to say when we started this  
12 project in 2003 we had 120 turbines. We eliminated half  
13 of those basically, and we eliminated a lot of lines of  
14 turbines that were way over 2,500 feet from any residence.  
15 Now, I am wondering why we haven't gone back and looked at  
16 those lines before we got to this point because there's  
17 6,000 acres out there and we can site 65 turbines on there  
18 as far as I can look at everything that I've got in my  
19 disposal. So I'm wondering why we haven't gotten to that  
20 point and maybe this is micrositing. Maybe it's moving  
21 this turbine from this line to another line, and the wind  
22 may be so much different or whatever, but the fact they  
23 can be moved and we were looking at 125 turbines at one  
24 time.

25 JUDGE TOREM: Let me just interrupt,

1 Mr. McMahan, because I do think Mr. Fryhling's question is  
2 well put. We looked at that same question in  
3 deliberations, and I think to be honest with you we have  
4 to reopen the record to understand why. But as I made a  
5 demarcation line with Ms. Anderson when we got the project  
6 on which to adjudicate it was up to 65, and those other  
7 ones that had been eliminated were done voluntarily by an  
8 effort, and whether it was to satisfy for the county or  
9 for some other reason as to leases of roads, that's not in  
10 the record. It's simply what we got and the record that  
11 we incorporated that was heard in front of the Board of  
12 County Commissioners. So if the Applicant finds that they  
13 wish to scrap the application and make a motion for us to  
14 reopen to expand other items, I think that goes beyond the  
15 Governor's letter, Mr. Fryhling, and I would be hesitant  
16 today to have Mr. McMahan answer that in any way. If he  
17 wants to address it--

18 MR. McMAHAN: Yes, there'd be all sorts of  
19 problems for us to ask you to reopen the whole case. The  
20 only thing--and I really want to stay within the record as  
21 well. In my mind I believe that we discussed why those  
22 were removed in the county hearings process. I believe  
23 it's in those transcripts, but beyond that I'm not  
24 comfortable definitively answering that.

25 JUDGE TOREM: Other Councilmember questions

1 that are within the record?

2 All right. Seeing none, let me hear from  
3 the County.

4 MR. McMAHAN: Thank you.

5 MR. CAULKINS: Good afternoon, Your Honor,  
6 Chairman, Members of the EFSEC Council. For the record,  
7 Neil Caulkins, Deputy Prosecuting Attorney. I wanted to  
8 start out merely by essentially reiterating--

9 JUDGE TOREM: Can you speak up,  
10 Mr. Caulkins?

11 MR. CAULKINS: No. I'll see if I can.  
12 How's that? Is that any better?

13 JUDGE TOREM: Yes. Thank you.

14 MR. CAULKINS. Let me start out by  
15 reiterating the question that the Governor posed. It's my  
16 understanding what the question that the Governor has  
17 posed specifically: Is can the project be economically  
18 viable with setbacks greater at four times turbine height?  
19 In a nutshell that's what she is seeking. Can this  
20 project remain economically viable if setbacks greater  
21 than four times turbine height are imposed?

22 It's the County's position, and I understand  
23 and appreciate that we are limited to the record and I  
24 will be speaking and quoting things directly from the  
25 record. Those have been handed out to you already I

1 believe. It is the County's position that there is  
2 nothing in the record at this point as to economic  
3 viability at any turbine height and that the record does  
4 need to be reopened to answer the Governor's question.  
5 What we're seeing here from the Applicant at one point  
6 seems to be some admission that they can economically live  
7 through micrositing setbacks greater than four times the  
8 turbine height; yet they won't answer how many turbines  
9 that's going to be. Why? Because there's nothing in the  
10 record to base such a thing on.

11 And so let me just start out with just  
12 reading from--oh and tucked in with this was the assertion  
13 that it was the County that asked the Applicant as to  
14 economic viability. It was the Applicant that brought  
15 this up. I'm reading from, and you have copies of it  
16 there, the May 3, 2006 hearing by the Board of County  
17 Commissioners. I'm at page in the transcription in the  
18 third column at page 45. I'm about halfway way down.  
19 I'll try to keep my head up so I'm reading into the  
20 microphone.

21 (Excerpt from hearing before Board of County  
22 Commissioners on May 3, 2006 starting on Page 46.)

23 "For the record, Chris Taylor representing  
24 the applicant.

25 I'd like to start by saying thank you very

1 much for your time. It's obvious that you've spent a lot  
2 of time preparing for this evening and reviewing what is a  
3 very voluminous record, and we certainly appreciate your  
4 attention to all that detail, and we appreciate your  
5 comments.

6 With respect to the many comments and  
7 questions that have been raised tonight, I'd like to point  
8 out we have repeatedly asked for comments from staff on  
9 this Development Agreement since it was submitted in  
10 December, and tonight we're very pleased to have those  
11 comments tonight; and we're pleased to have your comments  
12 tonight.

13 We believe that the concerns that you've  
14 raised this evening and that staff have raised this  
15 evening are adequately addressed in the record. In the  
16 interest of brevity and given the amount of time that's  
17 already been sent on this project by you, by us, by staff,  
18 by the community, I'd like to just state that on--as a  
19 representative of the Applicant and on behalf of Sagebrush  
20 Power Partners and its parent company, Horizon Wind  
21 Energy, I must inform you that at the proposed setback of  
22 2,500 feet as I--if I understand correctly, the proposal  
23 from the Board would in our opinion render this project  
24 invariable.

25 Thank you, very much.

1 CHAIRMAN BOWEN: Thank you.

2 Gentlemen, it sounds like we have hit an  
3 impasse regarding both or all three of us. Kind of from  
4 an independent route we came up with similar numbers. We  
5 didn't end up agreeing necessarily on those numbers, but  
6 they are all on that, you know, a range starting at 2,000  
7 feet on out.

8 I guess I would--Mr. Taylor's comments  
9 regarding the time spent on this and the effort that's  
10 gone into this everybody has taken this quite seriously,  
11 and I appreciate those comments you made.

12 Let me refer to my seatmates and see what  
13 direction we'd like to go tonight.

14 COMMISSIONER HUSTON: Well, with due  
15 respect, Mr. Taylor's comments didn't take us anywhere.  
16 There's absolutely nothing in the record that speaks to  
17 what is a viable or an inviable project. He's made an  
18 assertion, and I assume that assertion would be followed  
19 up with 'We don't intend to discuss this with you anymore,  
20 Mr. Huston', or 'We're withdrawing our application', or  
21 'We intend to ask for preemption from EFSEC', or some  
22 conclusion to this discussion. You've indicated it's not  
23 viable. Prove that to me so that I can determine whether  
24 or not in fact there is something in the record that I  
25 should consider.

1           We have an assertion; we have nothing more.  
2           There is nothing in the record to indicate that 5 towers  
3           is not viable or 15 or 500. I mean obviously there's a  
4           lot of room in the discussion because it went from a  
5           hundred-and-some-odd to 65. So needless to say, it wasn't  
6           with pinpoint accuracy that it was proposed in the  
7           beginning.

8           I mean I appreciate that you're now telling  
9           me that it's not a viable project, but--so what am I  
10          suppose to do with that? Are you withdrawing your  
11          application from further consideration on this by this  
12          board?

13                   MS. ERIN ANDERSON: Mr. Chair,  
14          Commissioners, Erin Anderson, 200 East Third, 105 East  
15          First in Ellensburg and Cle Elum respectively, for the  
16          proponent.

17                  Mr. Taylor has indicated to you that it is  
18          not an economically viable project at 2,000 or--I believe  
19          he said 2,500-foot setback.

20                  At this point you could vote to thumbs-up,  
21          thumbs-down this project. The application is in front of  
22          you. We can't go forward at 2,500 feet. And it is before  
23          you so you could take whatever action you choose.

24                   CHAIRMAN BOWEN: Okay.

25                   MS. ERIN ANDERSON: Thank you.

1                   CHAIRMAN BOWEN:  What I'm hearing is that  
2                   the applicant doesn't want to go forward any further.  I  
3                   don't know if we can interpret that as a withdrawal or  
4                   closing of the books or what.

5                   Commissioner Huston, you're pulling the mic  
6                   close so I'll--

7                   COMMISSIONER HUSTON:  I think it's important  
8                   to note for the record, Mr. Chairman, that through this  
9                   entire process we've had continuous notation in terms of  
10                  the items in the record.  We now have an assertion by the  
11                  proponent who's essentially tossed their hands up and said  
12                  it's not viable.

13                  I guess at this point, frankly, I'm a bit  
14                  disappointed that after all this time and effort and  
15                  months of discussion, they're not even prepared to offer  
16                  into the record--we've already discussed the need to throw  
17                  this back open for comment.  They're not even prepared to  
18                  discuss in fact why it's not viable, what constitutes an  
19                  economically viable project, or anything in the record to  
20                  substantiate what has been a last-minute assertion that  
21                  apparently there is a magical number of towers that makes  
22                  a project viable.

23                  I'm hearing nothing to support that  
24                  assertion, nothing whatsoever, other than I guess they  
25                  don't want to play anymore.  And I think it's important

1 when this record goes to EFSEC that after a great deal of  
2 deliberation, a great deal of discussion, a great deal of  
3 effort on the part of a number of citizens, as well as  
4 staff and the Board of County Commissioners of Kittitas  
5 County, we're now at a point where essentially the hands  
6 have gone up and I guess the discussion is over.

7 And, frankly, I'm not absolutely sure why we  
8 can't get a more definitive statement from the applicant;  
9 although, I suspect I know why. It'll play much better in  
10 front of EFSEC.

11 If in fact this is your last and best  
12 effort, applicant, come to the microphone and tell me that  
13 the draft I have dated May 1, 2006 is the absolute final  
14 and best offer of the applicant, and then I guess I'll  
15 base my decision on that.

16 CHAIRMAN BOWEN: We should note for the  
17 record the applicant doesn't wish to reply to that  
18 statement.

19 COMMISSIONER HUSTON: Well, then we'll note  
20 for the record that they do not wish to indicate whether  
21 in fact this is their best offer, and I guess we'll then  
22 have to make our decision in essentially a vacuum at this  
23 point. I would note for the record the applicant has  
24 chosen to no longer participate in the process in a  
25 meaningful manner.

1                   CHAIRMAN BOWEN:   So noted.   Mr. Hurson, what  
2                   are our options from here?

3                   MR. JAMES HURSON:   Well, you can--you could  
4                   take a vote on what you want to do.   It does sound like  
5                   the applicant has essentially told the County no and they  
6                   do not want to discuss this any further.

7                   And the Board could then take action  
8                   reflecting the applicant's lack of desire to further  
9                   discuss the matter with the County and has given no  
10                  proposals, counterproposals, or discussion in response to  
11                  the Board's discussion and take action there.

12                  I would, however, as long as I have the mic,  
13                  like to point out Mr. Taylor made some comment about  
14                  they've been asking us to give them comments on the  
15                  Development Agreement, and this is essentially the first  
16                  time is what he seemed to be saying.

17                  Mr. Taylor hasn't been in the meetings, and  
18                  I months ago suggested that the applicant clean up their  
19                  Development Agreement, clarify the language, and make a  
20                  specific proposal to the board and not just throw out the  
21                  document.

22                  And I pointed out several ambiguities and  
23                  problems with what they had, some of which the Board  
24                  brought out, and they chose not to make any sort of a  
25                  change.

1           So I don't appreciate Mr. Taylor trying to  
2 put in the record for EFSEC's purposes obviously that  
3 somehow the County staff was not talking to them. I  
4 specifically recall pointing out that even the simple math  
5 of number of turbines times megawatts equals maximum  
6 output, the math needed to make sense and little things  
7 like that drive us nuts and need to be cleaned up and  
8 suggested that they clean up the application.

9           So we did talk about the inadequacies of the  
10 Development Agreement early on. They chose not to make  
11 those changes.

12           COMMISSIONER HUSTON: Mr. Chairman, a  
13 motion?

14           CHAIRMAN BOWEN: Certainly, Commissioner  
15 Huston.

16           COMMISSIONER HUSTON: Mr. Chairman, I would  
17 move to on a preliminary basis deny the application for  
18 the project submitted by Sagebrush Power Partners, LLC,  
19 based on the contents of the Development Agreement dated  
20 May 1, 2006, which contains fatal flaws and inconsistent  
21 language which the applicant has indicated for the record  
22 that they do not wish to correct. Staff directed to  
23 prepare enabling documents, including Findings of Fact and  
24 Conclusions of Law, for our future review.

25           COMMISSIONER CRANKOVICH: Second."

1 (Ending of Excerpt from Hearing of Board of  
2 County Commissioners held on May 3, 2006 on Page 54.)

3 JUDGE TOREM: Mr. Caulkins, let me interrupt  
4 you a second.

5 MR. CAULKINS: Sorry for the length of this.

6 JUDGE TOREM: I understand that.

7 MR. CAULKINS: There's just a page left.

8 JUDGE TOREM: All right. So you're going up  
9 to the point where they adopt the motion?

10 MR. CAULKINS: Exactly. That's as far as  
11 I'm going. I apologize for the length of this excerpt.

12 JUDGE TOREM: Okay. Go ahead and wrap up.

13 MR. CAULKINS: Oh, yes.

14 (Excerpt from Hearing of Board of County  
15 Commissioners held on May 3, 2006 starting on page 54.)

16 "CHAIRMAN BOWEN: It's been so moved and  
17 seconded to deny on a preliminary basis the application as  
18 presented and noted by Commissioner Huston.

19 Any discussion of that motion?

20 COMMISSIONER CRANKOVICH: I'll put in my  
21 thoughts. This began long before I was seated as a  
22 commissioner here, and I believe--I will say for myself  
23 that I have reviewed everything that's been put in front  
24 of me and worked on what I thought could be a reasonable  
25 solution, and I am kind of disappointed that it just ends

1 like this.

2 CHAIRMAN BOWEN: Thank you. Any other  
3 discussion?

4 My discussion was pretty well noted in my  
5 opening statement. I think there's criteria that's in the  
6 record and that I guess supports the setbacks we're  
7 processing. It's obviously to the applicant how they want  
8 to act from this point.

9 Any further discussion?

10 Hearing none, all those in favor indicate by  
11 saying aye.

12 COMMISSIONER CRANKOVICH: Aye.

13 COMMISSIONER HUSTON: Aye.

14 CHAIRMAN BOWEN: I too will vote aye. The  
15 motion carries. This hearing is concluded."

16 (Ending of Excerpt from Hearing of Board of  
17 County Commissioners held on May 3, 2006 on Page 55.)

18 MR. CAULKINS: Therein lies pretty much the  
19 entirety of the record as to economic viability of this  
20 project. Even today the Applicant is unwilling to give  
21 the number of turbines that would be economically viable.  
22 Other items which is in the record which I have passed out  
23 copies to you is a bunch of printouts from Horizon's  
24 website listing their various wind projects all over the  
25 country, and these are just ones whose number of turbines

1 is under 60 and notice there are four. Well, there's one  
2 at 7, one at 6, one at 21 and 32. There's some very small  
3 turbines. And so if this is not economically viable at  
4 the smaller size, it is then curious that perhaps are they  
5 saying that they are bad businessmen; that they have these  
6 other four wind farms which are running in the red. I  
7 seriously doubt that. These were operated by them and are  
8 up and running.

9 JUDGE TOREM: Mr. Caulkins, clearly this  
10 part is not in the record, right, these Horizon wind  
11 energy projects with less than 65 in the printouts?

12 MR. CAULKINS: The printouts that--Darryl  
13 Piercy will be speaking a bit after. He can point to  
14 where in the record those were placed.

15 But the next thing I wanted to talk about  
16 was it is akin to the maps that we've seen here and  
17 basically I'm echoing what Mr. Fryhling said; that the  
18 initial application was I counted 131 little dots on this  
19 frankly, but that was with the original application. The  
20 revised application I counted 64, and as Mr. Fryhling said  
21 there are numerous gaps out in the middle of this, and  
22 there is no explanation in the record as to why things  
23 couldn't be moved from the exterior off into the interior  
24 and still have the same number of turbines. Again, it  
25 requires an opening of the record to look at what's

1       economical, what could be moved, why, all of that thing.  
2       We don't have the record for that.

3               Let's see. Touching on a couple of comments  
4       that were made previously, one, it seemed that it was  
5       asserted the County sort of arbitrarily came up with this  
6       2,500 feet and that wasn't in the documentation. Actually  
7       the EIS analyzed visual impacts of this to 2,500 feet so  
8       it was based upon the EIS.

9               I am not aware and I would be interested in  
10       seeing the cite to the record which talks about the types  
11       of impacts to the children of Washington and the county  
12       and all of these sorts of things that will be so  
13       devastating by the removal of all these turbines. I would  
14       like to see that.

15               The notion beside that whole line of  
16       reasoning fails with the Governor's question. The  
17       Governor's question is economic viability as to the  
18       applicant. What happens to the rest of us that's not a  
19       piece of that economic viability. Can you make more money  
20       than you spend to you as the applicant. It is not what  
21       happens to those of us, the rest in the community. I  
22       don't think that's the focus of what the question is.

23               I just wanted to wrap up with this sort of  
24       history of this question. As I read it, apologizing again  
25       for the length, out of the record the County asked that

1 the Applicant that they brought up the issue and the  
2 County asked the Missouri question: Show me. The County  
3 then asked that body, again, in its motion for  
4 reconsideration Items 5 and 6 as to economic viability.  
5 Show me where's the documentation as to economic  
6 viability. We didn't get an answer on that from you all.  
7 The Governor has looked at this now and she's saying just  
8 answer the County's question. Thank you.

9 JUDGE TOREM: I understand Mr. Piercy has  
10 some things to add.

11 MR. CAULKINS: Yes.

12 MR. PIERCY: Thank you, Judge Torem, Members  
13 of the EFSEC Council. For the record, Darryl Piercy,  
14 Director of Community Development Services for Kittitas  
15 County. If I may just to address the first question in  
16 regards to the foundation for the documents that were  
17 handed out this afternoon in the reference to the record.

18 I might say that in the course of testimony  
19 and presentation by Kittitas County before EFSEC board we  
20 did reference the website of Horizon. We did identify  
21 within that testimony the projects that were less than 65  
22 towers that were being proposed under this proposal.  
23 Those are located on the Horizon website and supplied to  
24 you with the information that was referenced in that  
25 documentation and provided a summary of that information

1 contained on the website. So while all the actual  
2 documents that are in your hands are not contained in the  
3 record, the reference to those documents and the website  
4 is.

5 JUDGE TOREM: Do you remember specific  
6 references to the projects and the number of turbines?

7 MR. PIERCY: At least two. A large portion  
8 of those there was reference to the number of projects and  
9 number of turbines that were contained in each of those  
10 projects.

11 JUDGE TOREM: Was that in prefiled testimony  
12 or something at the hearing itself?

13 MR. PIERCY: I believe that was in testimony  
14 at the hearing.

15 JUDGE TOREM: You can probably find  
16 something?

17 MR. PIERCY: If you leave the record open  
18 we'll provide those citations for you. The truth is in  
19 the course of the last several days when we've been  
20 scanning the volume of records before both the Board and  
21 the County, we've been trying to reach every citation we  
22 could. We've not had sufficient time to have the exact  
23 citation for you today, but I can assure you that those  
24 were referenced in the record and that the information  
25 before you is consistent with the testimony that you've

1 received.

2 JUDGE TOREM: Thank you.

3 MR. PIERCY: Just to move on, I would like  
4 to just address a couple of points. One is getting back  
5 to the basic question that I think is very appropriate  
6 that was addressed by Mr. Fryhling and that is the issue  
7 of when was the project modified from we'll use 120  
8 turbines. I believe the original project was 121  
9 turbines. When that was modified down to the current  
10 proposal of 65, the County continually requested  
11 information in regards to why the modification was being  
12 done primarily on the interior of the project rather than  
13 on the boundaries of the project where you would have more  
14 impact to neighboring property owners. In the course of  
15 those questions the only response that we received was,  
16 well, it would be of impact to those outer boundary  
17 property owners and therefore we would have to drop them  
18 from the project. They would no longer be participating  
19 property owners and therefore the center strings would  
20 then be just as close to nonparticipating property owners.

21 Our suggestion was that you retain them as  
22 participating property owners in some fashion and minimize  
23 your impacts to the exterior of the project. That  
24 discussion is one that we feel we've never had an adequate  
25 answer to and that there's no adequate answer contained

1 within the record that would indicate why it was more  
2 feasible to eliminate the towers in the center portion of  
3 the project than it was on the exterior. And while the  
4 map that has now fallen on the floor was demonstrated by  
5 the Applicant in this case to have impact on some of those  
6 tower locations on the exterior of the project what they  
7 failed to identify was the number of towers that were  
8 located within the interior of the project that could in  
9 fact be utilized for placement of towers today, and  
10 they've offered no viable explanation in the record as to  
11 why those could not be alternative sites for the displaced  
12 towers that would be 2,500-foot setback. So I think that  
13 is a question that begs to be answered. It has begged to  
14 be answered through the entire process both at the County  
15 level and at the level before the EFSEC board.

16 And we compliment the Governor on seeing the  
17 need to be able to come to terms with that question, and I  
18 think in reading through the record it must have become  
19 obvious to her staff and to her that there are unanswered  
20 questions in regards to location of towers that are viable  
21 locations that have been demonstrated by the Applicant  
22 that they were viable locations in the original project  
23 application and why they are not being utilized today to  
24 minimize the impacts and to meet the setback requirements  
25 that were being imposed by the County.

1                   So in order to come to terms with that  
2 question we do believe that the record would need to be  
3 opened so the Applicant would have an opportunity, even  
4 though they've had several opportunities by having the  
5 questions asked through the process, to now have the  
6 opportunity to explain why those towers cannot be placed  
7 in those portions in the center of the project that would  
8 have minimal impact on those surrounding property owners.  
9 So that's a question that we feel does need to be answered  
10 and we would ask the EFSEC Council to open the hearing in  
11 order to respond to that very question because we don't  
12 believe you actually get to the issue in terms of response  
13 to the Governor's question without first answering are  
14 there other alternatives available within the site where  
15 these displaced towers could go that could equally be  
16 utilized to be economically viable for the project.

17                   Originally they were included. Why they're  
18 not there now we're not sure. We did ask the question on  
19 the record is there a second phase planned for this  
20 project when the Applicant was before the staff and before  
21 the Board of County Commissioners, and the answer to that  
22 question was we don't believe there is one, but we can't  
23 guarantee there won't be one. And that's a paraphrase.  
24 It's not a quote. But the reality is, is that we believed  
25 all along that the interior of the project was being left

1       untouched so that a second phase could at some point in  
2       the future be developed. That's a very strong  
3       possibility, and I think, again, that question cannot be  
4       adequately answered without opening the record.

5                Just one final response to Mr. McMahan's  
6       statement as he closed which I feel does need a response.  
7       In the planning profession we certainly look at impacts  
8       and the environmental impact statement for this project  
9       and those that were referenced into the record in our  
10      belief clearly indicating that towers located within half  
11      a mile of an existing residence do pose a high impact as  
12      it was stated in the EIS, which we believe equates to a  
13      significant impact. And it is appropriate for planners to  
14      mitigate significant impacts to a moderate level, and  
15      that's what we were proposing to do with a 2,500-foot  
16      setback. We weren't imposing additional requirements over  
17      those that appeared in the environmental documentation.

18             In fact, I would like to think in terms of  
19      that process in a different way, the way the planners  
20      would think in terms of how you mitigate impacts rather  
21      than how attorneys would think. Because from a planner's  
22      standpoint we would not compromise a project or the  
23      required mitigation elements simply to make the project  
24      economically viable. If in fact you could not meet most  
25      mitigation requirements and you could not provide a

1 project that addresses those significant issues that are  
2 outlined in the environmental impact statement, then you  
3 really do not have a viable project, and that's okay from  
4 a land use perspective. Not every project is a viable  
5 project. Not every project is going to be economically  
6 acceptable to the applicant once you impose the conditions  
7 that are necessary to mitigate significant impacts.  
8 That's a perspective that the true planner would look at a  
9 project. That's what the planning profession would have  
10 you do.

11 If you must look at it from an economic  
12 viability standpoint, then the whole idea of providing  
13 appropriate mitigation measures goes out the window; that  
14 they are no longer what's driving the issues of the  
15 project, those environmental concerns that need to be  
16 mitigated, but rather you must compromise those principles  
17 to make the project economically viable.

18 And we don't believe that that is the proper  
19 avenue to take and we would suggest that in order to  
20 properly mitigate this project setbacks of 2,500 feet were  
21 necessary and that the Applicant has demonstrated by the  
22 reduction of their project from the 121 turbines to 65 and  
23 by leaving many strings open in the center of the project  
24 where turbines could be placed that it is a viable  
25 project; that those turbines could be relocated to an area

1 within the project site and mitigate the significant  
2 impacts that were identified in the environmental review.  
3 Be happy to respond to any questions.

4 JUDGE TOREM: Mr. Piercy, given your strong  
5 statement and the previous reference as to when the  
6 County's resolution said that 2,500 feet was a setback,  
7 has the County taken any legislative action before,  
8 during, or after this process to adopt the 2,500-foot  
9 setback from wind turbines to residences in this county?

10 MR. PIERCY. In part my answer can be, yes,  
11 because the County has taken action. It has actually been  
12 approved by the Board of County Commissioners, but it has  
13 not yet been adopted by ordinance. That will take place  
14 on Thursday.

15 What the County has done is developed an  
16 alternative process to the process that you saw this  
17 applicant go through that preidentifies sites that are  
18 approved for wind farm locations. We call it a wind farm  
19 overlay zone.

20 It's currently in a very selected portion of  
21 the county, but within that process if you meet certain  
22 criteria, one of them being setbacks of one-half mile from  
23 the nearest residence, then the process is expedited in  
24 terms of the review. It does not require a subarea  
25 planning process. It does not require a rezone. What we

1 required through that process is the development of the  
2 development agreement itself. But there are criteria laid  
3 out that once those criteria are met you can go into this  
4 expedited process where the permitting review is much less  
5 onerous in terms of having to actually create a subarea  
6 plan and a comprehensive plan amendment.

7 So we believe that that sets the stage for  
8 that standard through that process, and, again, that  
9 setback requirement is one-half mile.

10 JUDGE TOREM: Okay. All right. Thank you.  
11 I heard that was in the process. I wasn't sure. But it's  
12 been approved by the Board?

13 MR. PIERCY: It's been approved by the Board  
14 in public session and the enabling documents that will  
15 implement that decision will be in front of the Board for  
16 consideration on this Thursday.

17 CHAIR LUCE: That does not cover this area.  
18 That's a select portion of the county.

19 MR. PIERCY: Correct. It's 500 acres of the  
20 county at the eastern portion. It actually encompasses  
21 the area near Wild Horse. It encompasses an area where we  
22 anticipate an application to come forward in the very near  
23 future from an energy company for an approximately 60  
24 turbine project. We believe that area was selected for a  
25 host of reasons, not the least of which the environmental

1 review documentation that we have for that area already.

2 CHAIR LUCE: Thank you.

3 Mr. PIERCY: Thank you.

4 JUDGE TOREM: Thank you, Mr. Piercy.

5 Any other questions from the Council?

6 Seeing none, then let me ask the other  
7 parties that are present and I'll poll them as to who  
8 wishes to speak.

9 Counsel for the Environment have any input  
10 today?

11 I am seeing none.

12 Community Trade and Economic Development?

13 MR. USIBELLI: No.

14 JUDGE TOREM: ROKT?

15 MR. CARMODY: Yes.

16 JUDGE TOREM: Mr. Lathrop?

17 MR. SLOTHOWER: Yes.

18 JUDGE TOREM: And RNP is not here.

19 Ms. Strand, the Economic Development Group?

20 MS. STRAND: Yes.

21 JUDGE TOREM: You would. Okay.

22 Just quickly we'll poll those who said they  
23 had input.

24 Mr. Carmody, how long would your comments  
25 be?

1 MR. CARMODY: Not more than five minutes.

2 JUDGE TOREM: Well, I'll time you if you  
3 think not more than five minutes.

4 MR. CARMODY: That's fair and I'll do my  
5 best.

6 JUDGE TOREM: All right. Five minutes.  
7 And Mr. Slothower?

8 MR. SLOTHOWER: Not more than 15 minutes  
9 given your time constraints.

10 JUDGE TOREM: Ms. Strand?

11 MS. STRAND: Five minutes and you can time  
12 it.

13 JUDGE TOREM: Well, let me ask Mr. Slothower  
14 to go first then and see if we keep his under 15 minutes  
15 and then give the other two of you a chance. Then I want  
16 to see if the Councilmembers have any comments and the  
17 Chair's closing comments. It may be that the Applicant  
18 has two minutes and the County two minutes at the end. If  
19 we go a little bit past five o'clock I don't think  
20 anybody's going to lose anything here today.

21 All right. Mr. Slothower.

22 MR. SLOTHOWER: Thank you. I represent  
23 Intervener Lathrop, and you at the outset, Judge Torem,  
24 indicated that you want to hear our comments on the  
25 Governor's letter and our thoughts within the confines of

1 the record.

2 And, one, I read the Governor's letter  
3 several times to try to get to what she was asking in her  
4 letter or I thought she was asking, and one of the things  
5 that I was struck by was the notion that the project had  
6 to be economically viable. That's the fact there is no  
7 authority that I'm aware of under Washington law that a  
8 permitting jurisdiction has to render a decision that  
9 makes a project economically viable.

10 In fact, Mr. Wagner, the Applicant's land use  
11 expert who testified I believe on the second day of the  
12 adjudicative proceeding testified that the economic  
13 viability of a project is the Applicant's responsibility.  
14 In other words, the Applicant's job is to given the  
15 permitting jurisdictions, conditions on the project, their  
16 mitigating conditions ensure that they can make their  
17 project economically viable. So at the outset the notion  
18 that a land use decision should be permitted in such a way  
19 that it's guaranteed to be economically viable or is  
20 economically viable is unusual and contrary to my  
21 experience of land use law.

22 I don't think the Governor's question really  
23 listening to Ms. Anderson's and Mr. McMahan's comments I  
24 don't think the Governor's question was how far has the  
25 project come or as Mr. McMahan was concerned about whether

1 he should have to answer the Governor's question. I think  
2 what the Governor was looking for is show me the evidence  
3 in the record on economic viability of this project on a  
4 per turbine basis.

5 I read her issue is, and I'm paraphrasing, if  
6 I modify the setbacks from nonparticipating residences and  
7 that reduces the number of towers at what point does the  
8 project become economically unviable or inviable. That's  
9 what I think the issue is, and in order to get to my point  
10 I want to take you through some portions of the record  
11 that I think are very important to try to answer her  
12 question.

13 First, the Draft EIS. It's section 3.9, page  
14 56. Turbines less than half a mile have a high visual  
15 impact, and, in fact, that FEIS, Page 3.9-2, expands this  
16 and again indicates that at a half mile there's a high  
17 level of impact.

18 I'd also direct you to our post-hearing  
19 brief, Section 2.4.2, beginning really at page 14 and  
20 continuing through page 28. In those sections we cite to  
21 the record before the Board of County Commissioners all of  
22 which was incorporated into the County's prefiled  
23 testimony and take you through the various Board of County  
24 Commissioner meetings. The Board of County Commissioners  
25 requested that the Applicant suggest a setback that will

1 mitigate. That occurred at the April 12, 2006 meeting.  
2 The May 3, 2006 meeting the Commissioners had a  
3 discussion, arrived at this half-mile setback. Mr. Taylor  
4 states that the 2,500 setback renders the project to use  
5 his words inviable. I assume he was saying economically  
6 not a viable project with that setback.

7 The Board of County Commissioners asked for  
8 the data, basically the same question that I think the  
9 Governor is asking. Commissioner Bowen references the  
10 DEIS. May 31 hearing Chairman Bowen again asked for  
11 information on the economic viability. At that hearing  
12 I'm quoting from our brief. It's a short portion. And  
13 this is at page 24 of 34, line 3. Mr. McMahan stood up  
14 and said, "I was afraid you were going to ask me that  
15 question. All I can tell you is the information we  
16 provided to you in the correspondence is that a half-mile  
17 setback reduces the project in half and doesn't leave a  
18 sufficient viable project. That's the information I have  
19 back from my client." And that's all he said on the  
20 issue.

21 Then you move to Chris Taylor's supplemental  
22 prefiled testimony. At page 14, beginning at line 19,  
23 he's asked the question: Kittitas County has suggested  
24 that the Applicant was unwilling to address questions from  
25 the Board of County Commissioners regarding the affected

1 various proposed setback distances on the economic  
2 viability of the project. Can you respond to this  
3 assertion?

4 Mr. Taylor goes and basically has three  
5 responses. First is that it was a closed hearing and  
6 didn't think that the question was appropriately phrased  
7 then or posed then. Second, the Board of County  
8 Commissioners had failed to establish by vote. They  
9 needed to find objective criteria. I'm not sure it was  
10 their job to do, but that's beside the point.

11 And, third, this is the crux of his  
12 testimony, and I'm quoting: We have a fundamental  
13 objection to the County's assertion that they have a legal  
14 right to require us to divulge sensitive proprietary  
15 commercial information in the context of the land use  
16 approval process. And then he goes on and his conclusion  
17 is: Therefore we believe we have the right to make a  
18 subjective business decision about what constitutes a  
19 viable investment of our own funds. In other words, I'm  
20 not going to answer the question. And that's the very  
21 question that the Governor posed in her letter, at least  
22 from my reading of it.

23 And what you heard the Applicant say today is  
24 the same thing. They didn't ask the question. At some  
25 point there's a graph. On one side is the number of

1 turbines. On the bottom is the dollar sign and there's a  
2 line going up and there's a box in the middle and that's I  
3 think where the Governor wants to be. She wants to  
4 understand what that number is because there are some  
5 nonparticipating residences that will be impacted, and if  
6 she reduces the number she wants to know she could do that  
7 and still leave the Applicant with a viable project.

8 Mr. Taylor continuing on with his testimony  
9 at page 16 provides there's a question: What would be the  
10 impact of increasing setbacks from nonparticipating  
11 residences to turbines from a quarter mile and 2,000 feet,  
12 2,500 feet? It goes through an analysis of the number of  
13 residences that would be impacted, but again there is  
14 these other chances in his prefiled testimony to answer  
15 the Governor's question and he doesn't do it. Mr. Taylor  
16 indicates that there would be a loss of turbines, but in  
17 his answer he doesn't specify at what point the project  
18 becomes economically unviable.

19 He then on page 17, line 3, opines that the  
20 difference in visual impacts between a quarter mile and  
21 2,500 feet is minimal. Again, it doesn't talk about  
22 economic viability so it's not in the record. Yet their  
23 own expert, Mr. Priestley, contradicts Mr. Taylor's  
24 testimony. Mr. Priestley was the visual expert. He  
25 testified on the first day I believe in the afternoon. He

1 indicates that each setback has to be examined on its own  
2 because each will have a different setback on page 273 of  
3 the transcript. He also indicates that in some  
4 circumstances a setback of 2,500 feet will provide no  
5 mitigation of visual impacts, page 274.

6 The evidence in the record clearly shows that  
7 there are high impacts at a half mile and the evidence in  
8 the record is that those have to be mitigated in some way.  
9 So it would seem that it's incumbent during the process.  
10 It's incumbent upon the Applicant to say, look, if you  
11 reduce the number of turbines because they knew there were  
12 visual impacts that could only be mitigated by distance,  
13 their own expert said that, they had the opportunity to  
14 present the evidence. If you reduce the number of  
15 turbines, here's the corresponding impact on our  
16 investment dollar. That determines economic viability.

17 They haven't presented the evidence. It's  
18 not in the record. You cannot answer the Governor's  
19 question without reopening the record. If there is any  
20 questions, I will answer them or try to.

21 JUDGE TOREM: All right. Mr. Carmody.

22 MR. CARMODY: Thank you, Judge Torem and  
23 Councilmembers. I'll try not to be repetitive in my  
24 comments. I think a number of the points that have been  
25 made that I was going to make have come forward.

1           But the whole issue before you as I see it  
2 this afternoon and this evening is really a nonissue to  
3 the Council, and that is determining the economic  
4 viability of the project. I don't think that's an  
5 appropriate place for the Council to go. I think the  
6 question is, I think it was artfully expressed by  
7 Mr. Piercy was the proper planning perspective. We've  
8 talked about the economic viability of the project. We've  
9 talked about the record lacking any sort of record or  
10 support for economic viability. We know from  
11 Mr. McMahan's comments this afternoon that a reduction in  
12 eight turbines allows the project to remain economically  
13 viable and we don't know whether reduction of 24 turbines  
14 makes it economically viable and we don't know where that  
15 threshold is.

16           I would urge you to consider the role and  
17 that is a proper planning role and proper establishment of  
18 mitigation measures. Horizon chose its location, not the  
19 people that live there, not Kittitas County. They chose  
20 this location and the problem with the location is the  
21 parcellization of properties, the interplay of existing  
22 residences, and the proper rights associated with people  
23 to develop the use of their own property. There's no  
24 substantive debate that I've seen in reviewing this record  
25 over the County's determination of 2,500 square feet or

1 2,500-foot setback. Those questions were asked both by  
2 Judge Torem and a number of Councilmembers including  
3 Mr. Sweeney during that hearing process. I really thought  
4 quite frankly perhaps the best question asked during the  
5 course of the hearing was by Councilmember member Johnson,  
6 and the question she asked of Mr. Peck was I guess my  
7 question is: You talked about the County not giving  
8 reasons on how they came up with 2,500. How did you come  
9 up with 1,320?

10 Mr. Peck's answer was in effect I have no  
11 idea. There were no standards given to you. Judge Torem  
12 said, "What have you looked at? Give us something on  
13 that." There's nothing in the record to support that. So  
14 the question then becomes what is in the record and is the  
15 setback standard of 2,500 from residences or 2,000 for  
16 property line established or suggested by Kittitas County  
17 reasonable and appropriate and the record is replete with  
18 information on that.

19 Specifically, the EIS notes that visual  
20 sensitivity and high level of sensitivity is within a half  
21 mile. That was a standard in the EIS. Unavoidable  
22 environmental impacts are associated with flashing red  
23 lights if they're within one mile of a residence. That is  
24 in the FEIS 3.9, page 38. Ice throws from the turbines  
25 are 1,320 feet from residences in the EIS. Shadow flicker

1 analysis is 2,500 feet of a turbine within line of sight.  
2 So there's a basis for 2,500 there.

3 The commissioners went and viewed the  
4 Hawkins Ridge Project and other projects and concluded  
5 that based upon that observation and study that 2,500 to  
6 3,000 feet was an appropriate setback to mitigate the  
7 measures or mitigate the impacts. That's a reasonable  
8 basis. It's certainly more than a basis that was provided  
9 by Horizon.

10 I think it's also instructive in this  
11 proceeding to take a look at the original application and  
12 the modified application. One of the troubling points to  
13 me throughout this process is you don't really know  
14 whether micrositing is going to occur. We know that  
15 there's a number of 65 turbines placed on the project. We  
16 don't know if they're all in String A or String G. You  
17 can modify that and there's no standards in setting the  
18 number within a string or the location of the strings  
19 used.

20 But if you compare that original application  
21 to the modified application, just take a quick look at the  
22 strings that were eliminated. You get 16 turbines that  
23 Horizon is saying is no longer viable because of 2,500,  
24 and if you look at the interior portions of that  
25 development there are seven turbines within String G that

1 were removed clearly in the middle of the project. There  
2 were four turbines from String H removed. There were a  
3 couple turbines from String F removed. There were four  
4 turbines from String I removed. If you simply put them in  
5 the middle of the project you have an economically viable  
6 project under their own analysis without having any facts  
7 to support that. So it's accomplished or can be  
8 accomplished.

9 But it really shouldn't be ultimately the  
10 question of economic viability. The only reason that came  
11 up is because Horizon said we can't live with these  
12 standards. That's the only reason it came up before the  
13 County. That's the only reason it came up before you and  
14 it's exactly the same question that the Governor asked.

15 The County struggled and tried to get that  
16 information. That information wasn't provided. You asked  
17 the same sort of questions. That wasn't provided. It's  
18 not appropriate to this community to say buy a pig in a  
19 poke.

20 The final point I want to make is that in  
21 the absence of concrete data and support for siting and  
22 establishing setbacks, I think you have to do exactly the  
23 opposite of what Horizon said, and that is you have to  
24 base your setback on the worst-case scenario. We don't  
25 know micrositing. Mr. Priestley said we don't know what

1 happens at a particular location. Judge Torem asked those  
2 questions. Four times height is located in some instances  
3 not in others, particularly where you have ridge issues  
4 which you have prairie view.

5 So you need to set since you don't have  
6 specific micro siting a setback of 2,500 and use that as  
7 your baseline, not your ending point. You don't start off  
8 with something that works in the perfect case and hope  
9 that it works in the more difficult case. So I think that  
10 the 2,500 the County talked about and I think economic  
11 viability is a nonissue. But even if it's an issue  
12 there's a design standard and format that can make those  
13 be accomplished. Thank you.

14 JUDGE TOREM: Thank you, Mr. Carmody.

15 Ms. Strand.

16 MS. STRAND: Thank you. I'm going to be  
17 coming at this a whole different way. I'm not an attorney  
18 so you're going to have to bear with me, and if I stray  
19 one way or another, please let me know.

20 But I too got a copy of the Governor's  
21 letter and read it, and I have to say when I read through  
22 it, I thought there should have been a question mark after  
23 her question about economic viability of the project. In  
24 my mind when I read it she was saying: "Can you have  
25 further setbacks and still have the project?" That's it.

1                   But I came as an economic development  
2 professional. As an economic development professional I  
3 work with businesses of all sizes, types, etc. They come  
4 to me with projects. They have to look at all kinds of  
5 different things. They look at markets. They look at  
6 land uses. They look at work force, all kinds of  
7 different things, and then the company makes the  
8 determination based on that information. They're  
9 businessmen that look at their breaking analysis, the  
10 fixed and variable cost all of those things whether a  
11 project is viable. So the company came here and said we  
12 have a project. They reduced it down to a point where  
13 they came to you with a 65-turbine project which was  
14 presented.

15                   All the information, all the data,  
16 everything that we collected was based on that particular  
17 project. I think we should really look at and what the  
18 Council should be really considering isn't whether the  
19 project is economically viable but what kind of mitigation  
20 can be made to have setbacks further than they are now or  
21 whether there could be any, and that's really what we  
22 should be focusing on rather than the two words "economic  
23 viability".

24                   I want to refer you back to Steve Grover's  
25 report which was introduced in testimony. He talked a lot

1 about the economic impacts of the project on the county.  
2 Now, in my mind economic viability isn't just with the  
3 applicant. It would also have to do with the other people  
4 within the community here. You know the significant  
5 property tax benefits that are going to come with this  
6 project. At one point five million dollars a year is what  
7 the property tax of the project would pay as a current  
8 basis. About a million dollars of that would come here to  
9 the county in the form of taxes to the county, to the  
10 roads, to schools, to the hospitals, to all those  
11 different taxing districts. As we go down through all  
12 those different tax districts as Ms. Anderson referred to  
13 there are certain bonds and levies that are voted excess  
14 kinds of things that property owners within districts  
15 share equally based on their assessed value a certain  
16 percentage of. So, for example, I try to explain this,  
17 and it's really difficult to explain so I'm going to take  
18 it down to real simple terms. If you have a taxing  
19 district with ten people and the taxes are a hundred  
20 dollars a year, those ten people will share in that bill  
21 at ten dollars a person. However, if those people bring  
22 in another ten, then suddenly everybody else pays five  
23 dollars, which is what we've been trying to talk about as  
24 the benefit of this project.

25 I did a little bit of research last night

1 and looked at the Kittitas and Wild Horse project. If I'm  
2 straying beyond let me know, but I'm just briefly going to  
3 tell you that it was true. The taxes do go down in  
4 certain tax districts. The value did not go down, but the  
5 tax payment did go down from 2006 to 2007.

6 Back to the economic viability, we also have  
7 to consider the fact that as the turbines get produced  
8 when we talked about direct costs, those direct costs then  
9 are going to be spread out over the megawatts that are  
10 produced from this project so that may in fact render the  
11 cost of the megawatts to be so high that perhaps somebody  
12 wouldn't be able to purchase it or that the consumer  
13 wouldn't be able to afford to buy it.

14 And finally what we need to look at is we  
15 need to look at what the company is going to tell us. The  
16 company should not have to prove whether the project is  
17 economically viable at any particular point. They should  
18 just be able to say that we don't have a project. If this  
19 were any other permitting agency, I'm not certain that  
20 would be a question that somebody would ask to prove that  
21 their project isn't viable at a certain point. A company  
22 either walks or they do the project.

23 So the Economic Development Group  
24 appreciates the fact that the Governor has asked for some  
25 more information on a particular item that she was

1 concerned about and the Council has come here to ask for  
2 additional comments from the interveners and also the  
3 general public, and we hope that you will take that  
4 information back, come to some sort of conclusion quickly,  
5 and remand it back to the Governor. Thank you.

6 JUDGE TOREM: Thank you.

7 Councilmembers, were there any other parties  
8 from whom you wanted to ask questions, including  
9 Ms. Strand?

10 I'm not seeing any now. It's about five  
11 minutes to 5:00. I'm not sure because this is not an  
12 adversarial proceeding we need to have--

13 MR. FIKSDAL: May I just interrupt, please.  
14 You were handed out written the comments and I just want  
15 to note that the Renewable Northwest Energy Project, Troy  
16 Gagliano, sent a comment letter in. It's the fourth from  
17 the rear of that packet.

18 JUDGE TOREM: All right. So that's the  
19 other party. It's the fourth from the back of the packet.

20 MR. FIKSDAL: Yes.

21 JUDGE TOREM: All right. So RNP is not here  
22 today, but Troy Gagliano I see it now in a letter dated  
23 July 16 that lays out as being three numbered paragraphs  
24 below. So we will consider that as comments from RNP. I  
25 won't read it into the record today, but it will become

1 part of the appendix to the transcript of today's session.

2 In the interest of this not becoming  
3 adversarial and going back and picking upon each other's  
4 comments because if I give it to one party, I'll have to  
5 give it to the other; that everybody answered the question  
6 as they read it.

7 So I think perhaps if we have anymore EFSEC  
8 proceedings here in Ellensburg, we might consider hiring  
9 of an expert grammarian if we get any further remands.  
10 Each of you read the Governor's letter a little bit  
11 differently, and I want you to realize at least that I  
12 think from what I'm hearing and hope the Councilmembers  
13 will agree that it's helpful to hear just how this letter  
14 fell depending on where people were on how their feelings  
15 of the project were, where they participated. I think  
16 tonight we'll have an even broader set of comments.

17 I do want to again reiterate for those that  
18 are here from the public who intend to come tonight that  
19 we're going to give priority to any of the  
20 nonparticipating landowners who do sign up to speak at the  
21 beginning of the meeting and move them up the list and  
22 give them if they wish a chance to essentially cut and  
23 line as the Governor's letter does talk about moving  
24 setbacks as to these people and then the question of  
25 economic viability. So I think the Council will do well

1 to hear from them first. All members of the public will  
2 be given at least the standard three minutes. If we  
3 expand that to four or five depending how many people show  
4 up tonight we will, but it will simply be a question as to  
5 how do they want to answer the question posed by the  
6 Governor and what else do they think is in the record that  
7 we need to consider; and if they think there are other  
8 opportunities for us to reopen the adjudication, they can  
9 make that clear tonight.

10 We are going to have some easel boards set  
11 up--we won't fall down tonight--to have some guidance for  
12 members of the public as to where they should guide their  
13 comments. Essentially some questions that set not the  
14 boundaries, if you will, but the general direction of  
15 where their comments should go to the Council.

16 So that's what we intend to do at 6:30, and,  
17 Mr. Fiksdal, we're back in this room; is that correct?

18 MR. FIKSDAL: That's correct.

19 Mr. Piercy, do you have a question?

20 MR. PIERCY: May I just clarify you will not  
21 be allowing any additional testimony or comments from  
22 those that are here before you today this afternoon?

23 JUDGE TOREM: Unless you think it's  
24 necessary, let me know now with everybody. We wanted to  
25 have a separate meeting for the parties.

1 MR. PIERCY: I wanted to ensure that you're  
2 not going to accept additional comments from the Applicant  
3 at tonight's meeting as an introduction without giving  
4 opportunity for response.

5 JUDGE TOREM: Correct and I didn't hear  
6 anything from the Applicant today that said they had a  
7 proposal that they wished the Council to consider in  
8 response other than the microsites issue which certainly  
9 falls within the discretion of EFSEC. It may be that that  
10 proposal is taken up and acted on by the Council, but I  
11 don't think it's so concrete that everybody gets handed a  
12 two-page here's what the Applicant wants the Council to  
13 do. I think we want to introduce that that didn't happen  
14 today. So I didn't see any reason to have any of the  
15 parties to address the public. We'll have simply what the  
16 Governor's addressed to the parties and the public, and  
17 we'll have two separate meetings in that regard.

18 MR. PIERCY: Thank you.

19 JUDGE TOREM: Any other questions from the  
20 parties?

21 MR. SLOTHOWER: Will there be a transcript  
22 of this and tonight's proceeding on the website?

23 JUDGE TOREM: I believe that is the plan.

24 Mr. Fiksdal, do we intend to purchase the  
25 rights to the transcript?

1 MR. FIKSDAL: Yes.

2 JUDGE TOREM: All right. That's the answer.  
3 It will be available probably the standard two weeks. My  
4 thought is that we did this as early as we could to get  
5 time for the transcript, and the target will be by the  
6 first couple of days of August that the Council will have  
7 deliberated and then issuing an order. I don't believe  
8 unless the Council decides that they're going to reopen  
9 the adjudication that they'll come back to Ellensburg and  
10 they certainly won't come back to Ellensburg simply to  
11 announce that. That would be at the next regular Council  
12 meeting or in some other communicae. But look for some  
13 action sometime after August 1st. Probably before the  
14 August 10 or 11th meeting, whatever day that's on, the  
15 second Tuesday, somewhere in the first two weeks of  
16 August. If you haven't seen anything before that Council  
17 meeting, it will be on the agenda that day.

18 MR. SLOTHOWER: Thank you.

19 MS. SCHANTZ: Is there a list of the 16  
20 landowners that I might look at?

21 JUDGE TOREM: Yes, ma'am. We have a copy of  
22 that and we'll show it to you when we close today's  
23 hearing.

24 MS. SCHANTZ: Thank you.

25 JUDGE TOREM: Mr. Fiksdal, anything else

1 that we need to do today in this session?

2 MR. FIKSDAL: No.

3 JUDGE TOREM: Chairman Luce, anything else  
4 you want to put on the record this afternoon?

5 CHAIRMAN LUCE: No.

6 JUDGE TOREM: Mr. McMahan, do you have a  
7 question?

8 MR. McMAHAN: My only question or comment is  
9 we prepared what we call some issue papers for the  
10 Council. I only have three copies. I wasn't intending to  
11 hand them forward unless in my view some of the legal  
12 issues kind of raised here that we would like to rely back  
13 on the briefing. We haven't received a copy of the  
14 County's submittal so I would just appreciate the  
15 opportunity to hand this forward to Mr. Fiksdal. It  
16 basically encompasses the responses to a number of the  
17 issues that were raised by the County in the prior stage  
18 of the proceedings in a very clear way.

19 JUDGE TOREM: Is this simply a summary of  
20 what you presented today?

21 MR. McMAHAN: No, it's not just a summary.  
22 It relies on the briefing that we previously submitted.

23 JUDGE TOREM: Can I take a look at it real  
24 quickly and it will give me an idea whether this is a last  
25 minute chance to throw something in that the other parties

1 will feel disadvantaged about or if this is something else  
2 that--again, nobody was told to predistribute anything  
3 today so I don't believe it's--What's the word we used  
4 earlier on?--sandbagging. We're doing this again. It  
5 looks more like a legal brief as to the issues that were  
6 raised.

7 As long as you will distribute this to the  
8 rest of the group we can post it on the website if we have  
9 it electronically. You're saying issue papers. Let me  
10 just read the topics so people know what I've got from  
11 you.

12 You posed a number of questions and try to  
13 answer them. Is there an environmental basis for the  
14 setback condition? And you spend three and a half pages  
15 answering that question and laying out I think it's  
16 citations to the record. That's what it looks like here.

17 Then you answer the question: What's the  
18 character of the project area? Is it a neighborhood?  
19 That was the term that came up in the County proceedings.  
20 You spent page 6 and half of page 7 on that.

21 Page 8 the question is: Did Horizon  
22 "refuse" to work with the County to resolve the setback  
23 issue? And you have three pages on that.

24 And does the County recommend a variance  
25 process and as such is the process a viable solution?

1 That's a one-page discussion.

2 Is the project as proposed an important  
3 project to enable Washington Energy Policy? Two pages on  
4 that.

5 And what precedent did the KV remand from  
6 the Governor set for energy policies? Two pages on that.

7 Can Horizon increase setbacks further during  
8 the micrositing process? A page and a half.

9 So I think you did touch on each of these  
10 during your briefing, and it does appear to me that it's  
11 simply citations to parts of the record so I don't have  
12 any objection to this being handed forward. What I will  
13 point out is that you've done it in a narrative point of  
14 view and a summary; comment, reference to record; comment,  
15 reference to record. The other things that you've got  
16 handed up today were all excerpts from the record or  
17 entire exhibits, and that's other than the item that I  
18 asked Mr. Piercy about that he acknowledged was  
19 referenced, but the actual documents weren't in the  
20 record. This would be in the same category.

21 The Council if it chooses to reopen the  
22 record later, reopen the actual adjudication, would make  
23 this something they could base their decisions on.

24 At this point both Mr. Piercy's documents  
25 other than as they're referenced in the original record

1 and this item would simply be a matter for discussion for  
2 the Council as to does it want to reopen the adjudication.  
3 Does this suggest that the record is full enough to answer  
4 the Governor's question or does this suggest that the  
5 record is not sufficient as a number of other parties have  
6 pointed out to address the question of economic viability.  
7 And if that's what the Council decides is the Governor's  
8 focus, then maybe it would be a readjudication would be  
9 reopened.

10 So I'll take a copy of it now and make it an  
11 appendix to what occurred today. I do want to make sure  
12 that it's distributed to those that can get a copy of it  
13 as quickly as possible. Do you have it electronically?

14 MR. McMAHAN: We'll send it to the service  
15 list first thing tomorrow morning or if you want me to try  
16 do it this evening yet, we could try to accomplish that.

17 JUDGE TOREM: Tomorrow morning would be soon  
18 enough I'm sure. We encourage written comments from the  
19 public tonight so I'm anticipating getting a number of  
20 those that we already have.

21 Does anybody else have anything in a written  
22 format that they wanted to turn in to be an appendix to  
23 this transcript in any way, shape, or form?

24 MR. CARMODY: Judge Torem.

25 JUDGE TOREM: Mr. Carmody, come up to the

1 microphone, sir.

2 MR. CARMODY: If you are indicating that  
3 you're interested in accepting briefing or written  
4 argument of that type that wasn't something that was clear  
5 to me from the notice, and we would like an opportunity to  
6 provide something similar to you, if that's where you want  
7 to go. I understand the limitations on the record.

8 JUDGE TOREM: I recognize that the parties  
9 each read the notes a little bit differently as to what  
10 was expected today. I don't as I read off those issues we  
11 heard something on each of those today but not in the  
12 detail that's here with exact citations to which exhibit,  
13 which page number. I think that's the only advantage to  
14 the Council is we have exhibits and page numbers. Your  
15 discussion in the five minutes that it was very helpful I  
16 think Mr. Carmody in giving us exhibit and page numbers  
17 and references so I don't see any advantage being gained.

18 Again, the record is what the record is.  
19 I'm not particularly prone--we told the audience tonight  
20 is the deadline. If you don't turn in your items, you  
21 don't turn in your items. So I don't know how we could  
22 have been more clear and said it applied to the whole day.

23 MR. CARMODY: I think we all had the same  
24 understanding and this at the end came in different. I  
25 think Mr. McMahan's presentation was very similar.

1 JUDGE TOREM: Had he turned it in at three  
2 o'clock when we hit the gavel nobody else would have run  
3 out to the car and got something. If you got it in the  
4 car, go get it. If you don't, we can't take it.

5 MR. CARMODY: I just wanted to make that  
6 request. If you thought that was an appropriate kind of  
7 submittal, we would have liked to have had that  
8 opportunity.

9 JUDGE TOREM: I've got two Councilmembers  
10 pointing out to me we're not going to accept anything  
11 after the end of the meeting. So as much as it came out  
12 at the last minute, again I don't think--he could have  
13 offered it at three o'clock. He's offering it at ten  
14 after 5:00. It's the same impact and I would have  
15 probably said the same thing earlier I would imagine.

16 Mr. Caulkins, you look like you have  
17 something.

18 MR. CAULKINS: Again, for the record Deputy  
19 Prosecutor Neil Caulkins. I would just like to register  
20 the County's objection to the acceptance of this document  
21 because what the County set forward, the documents we  
22 passed out were merely copies of what already is in the  
23 record in argument with no speculation.

24 JUDGE TOREM: Except when I asked Mr. Piercy  
25 about it. I mean we could have the same argument, and I

1       could have had an objection from Horizon which I didn't  
2       get as to the documents that were on their website that  
3       Mr. Piercy said admittedly aren't in the record but are  
4       referenced. We're not reopening the adjudication. That  
5       record is the same, Mr. Caulkins. So I'll note your  
6       objection. If you want to further state the basis for it,  
7       it won't be ruled upon at any point because we're not in  
8       an adjudication.

9                   MR. CAULKINS: One further basis then is  
10       that this what I'm gleaning from your description of what  
11       the Applicant has set forward it seems to be more akin to  
12       a brief, and the County feels disadvantaged in not being  
13       able to do the same.

14                   JUDGE TOREM: All right.

15                   Councilmembers, anything else?

16                   Ms. Strand?

17                   MS. STRAND: I have a one-and-a-half page of  
18       my testimony which is probably more eloquent than what I  
19       said. I've scribbled on it now and I would like to go  
20       back to the office and redo it. May I submit this this  
21       evening?

22                   JUDGE TOREM: Why don't you bring a copy to  
23       Mr. Fiksdal tonight and that way we can post it. Do you  
24       have an electronic copy you can submit?

25                   MS. STRAND: I do.

1                   JUDGE TOREM: Send that to the service list  
2 tomorrow morning as well. We can post that. I'm sure all  
3 the other comments that we have already received  
4 electronically will be posted. Those that aren't will  
5 take a little bit of time while we make them into PDF  
6 documents and get those posted.

7                   MS. STRAND: Thank you.

8                   JUDGE TOREM: All right. It is now ten  
9 minutes after 5:00 thereabouts. We are adjourned. We  
10 will reconvene at 6:30 tonight for the public comments.

11                   \* \* \* \* \*

12                   (Whereupon, the special meeting was  
13 adjourned at 5:10 p.m.)

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A F F I D A V I T

I, Shaun Linse, CCR, Certified Court Reporter,  
do hereby certify that the foregoing transcript  
prepared under my direction is a true and accurate  
record of the proceedings taken on July 17, 2007,  
in Ellensburg, Washington.

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Shaun Linse, CCR

CCR NO. 2029