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7 **BEFORE THE STATE OF WASHINGTON**  
**ENERGY FACILITY SITE EVALUATION COUNCIL**

8 In the Matter of Application No. 2003-01

NO. 2003-01

9 SAGEBRUSH POWER PARTNERS,  
10 LLC

RESPONSE TO APPLICANT'S  
OPENING BRIEF, PROPOSED  
FINAL ORDER, AND PROPOSED  
SITE CERTIFICATION  
11 AGREEMENT

12 KITTITAS VALLEY WIND POWER  
PROJECT

13 **I. INTRODUCTION**

14 Counsel for the Environment (CFE) hereby submits this Response to Applicant's  
15 Opening Brief, Proposed Final Order, and Proposed Site Certification Agreement. CFE is  
16 charged with representing the public and its interest in protecting the quality of the  
17 environment in proceedings before the Energy Facility Site Evaluation Council (EFSEC).  
18 RCW 80.50.080. In this regard, CFE's involvement in review of the Kittitas Valley Wind  
19 Power Project (KVVPP) is limited to the environmental impact of the proposed project. CFE  
20 takes no position regarding preemption or the proposed project's socio-economic impact, and  
21 neither supports nor objects to construction of the KVVPP.

22 Promotion of renewable energy sources is in the public interest, so long as the  
23 development of those renewable sources does not have an undue adverse impact on the  
24 quality of the environment. Although wind energy presents many positive environmental  
25 impacts such as reduced reliance on fossil fuels and reduction in emissions of greenhouse  
26

1 | gases, construction of wind power plants also poses environmental impacts that must be  
2 | carefully considered and mitigated.

3 |         The two primary significant environmental impacts raised by the KVVWPP are (1) the  
4 | effect on the shrub steppe habitat within the project area and region; and (2) the effect on  
5 | avian species, including birds and bats. The Applicant should be commended on many of its  
6 | proposed mitigation measures argued for in its Opening Brief and listed in its Proposed Final  
7 | Order, and Draft Site Certification Agreement (Draft Certificate). However, this Response  
8 | will identify additional measures that should be included in any Site Certification Agreement  
9 | (Certificate) if the Governor approves the Application.

10 |         Contingency environmental mitigation plans must be enacted to adequately address  
11 | unintended consequences or unforeseen problems if the project is constructed and a particular  
12 | mitigation need arises. Most importantly, projected avian mortality must not materially  
13 | exceed current expectations so that an Altamont Pass situation does not occur in the Kittitas  
14 | Valley.<sup>1</sup> If the KVVWPP is built, proper stewardship of the environment strongly suggests that  
15 | the mitigation measures proposed by the Applicant, along with those advocated for below,  
16 | should become elements of the Certificate.

17 | **II. CONDITIONS THAT SHOULD BE INCLUDED IN THE CERTIFICATE**

18 | **A. The Certificate Must Contain A Detailed Plan For Mitigating Shrub Steppe**  
19 | **Destruction And For Revegetating Disturbed Areas.**

20 |         The Certificate should assure that temporarily disturbed shrub steppe, a State of  
21 | Washington Priority Habitat, will successfully be re-grown under the Applicant's mitigation  
22 | plan. In its Draft Certificate, Article IV.E.1, Applicant suggests it be required to "avoid, to  
23 | the greatest extent possible, construction activities outside areas that will be permanently  
24 | disturbed except during the months of May through October when soil moisture is low." This  
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26 | \_\_\_\_\_  
<sup>1</sup> Altamont Pass was an early generation wind farm in California. Poor citing of this project has resulted  
in a concerning number of annual avian kills, especially among raptor populations.

1 proposed language is not strong enough to adequately protect the environment. All  
2 construction activities outside of the permanently disturbed areas should be strictly limited to  
3 those proposed months. This mitigation measure is contemplated in the testimony of  
4 Applicant witness on habitat biology, Wally Erickson, as well as in the Draft Environmental  
5 Impact Statement (DEIS) itself. Mr. Erickson testified that his analysis assumed that heavy  
6 construction would occur outside of the critical winter months. KVVPP Hearing Testimony  
7 of 9/20/06, P. 682, Ln. 6-13. The DEIS similarly assumes this dry-month construction  
8 schedule at 3.2-33 ¶3 and again at 3.2-37 ¶1.

9 The Certificate should also contain measurable objective standards for evaluation of  
10 post-construction site restoration success. Consistent with Draft Certificate, Article IV.E.9,  
11 the Certificate should provide that reseeded programs will be required when optimal  
12 germination and establishment conditions are present and not necessarily immediately  
13 following the disruption.

14 Threat of disruption of lithosols within the region are of particular concern. Lithosols  
15 are a specialized “shallow soil” subdominant habitat. Lithosols are sensitive to disturbance  
16 and difficult to restore. Unfortunately, a great proportion of lithosols occur along ridge tops  
17 where turbines are proposed to be placed. In addition to the language in the Draft Certificate,  
18 the Certificate should specifically provide that Applicant’s revegetation program will make a  
19 concerted effort to successfully regrow lithosols in the temporarily impacted areas of the  
20 project.

21 Consistent with Draft Certificate Article V.A, and with Applicant’s stipulation with  
22 CFE, the Certificate should provide for an EFSEC approved environmental monitor (EM)  
23 with the authority to stop all construction on the site for violations of the Certificate. The EM  
24 should be a qualified engineering firm and report directly to EFSEC. Moreover, the  
25 Certificate should provide that the Applicant’s referenced “Stop Work” criteria should be  
26 approved by EFSEC, not merely be created in consultation with EFSEC.

1 **B. The Certificate Must Include A Detailed Mitigation Plan To Address Bird Kills.**

2 The Audubon Society and many members of the Kittitas Valley community have  
3 objected to the one year avian study conducted by the Applicant. Many individuals have  
4 argued that a two year study should have been conducted to gain a better understanding of  
5 avian abundance in the KVVPP area. Members of the Audubon Society and local community  
6 also asked for night studies to be conducted. The Applicant resisted these requests, relying on  
7 the one year study as sufficient. Although the Washington Department of Fish and Wildlife  
8 (WDFW) Wind Power Guidelines only call for a one year study and a one year study is  
9 common within the industry, the more comprehensive study called for by the environmental  
10 community, including night monitoring, would have provided more data to form the basis of  
11 avian kill projections. Because the Applicant chose to forego a more comprehensive study,  
12 EFSEC should hold the Applicant strictly to the mortality numbers its experts have projected.  
13 To do this, EFSEC must be empowered and prepared to respond swiftly to avian mortality  
14 rates materially exceeding the projections of the Applicant by shutting down the offending  
15 turbine(s) during the hours/days found most likely to produce unexpected kill rates.

16 Consistent with the Draft Certificate Article IV.E.5, the Council should require a  
17 comprehensive monitoring program (i.e., the Technical Advisory Committee (TAC)) as a  
18 condition of any Certificate. As proposed by the Applicant, the TAC should convene for the  
19 life of the project, unless terminated by EFSEC for the Applicant's stated reasons (i.e.  
20 attrition, etc.) All TAC members should be approved by the Council in an effort to ensure  
21 that diverse interests are represented. The members proposed by the Applicant  
22 (representatives from the Washington Department of Fish and Wildlife, United States Fish  
23 and Wildlife Service, EFSEC, Kittitas County, the Audubon Society, and the certificate  
24 holder) are important interest groups to be represented. However, an adjacent landowner  
25 without a turbine lease agreement, or any other contractual obligation with the Applicant,  
26 should also be included as a member. CFE should receive copies of all documents produced

1 by the TAC and access to all documents presented to or reviewed by the TAC, as well as the  
2 option to intervene as a member of the TAC.

3 Consistent with Draft Certificate Article VI.C.5, the Certificate should include a  
4 condition that the TAC shall reconvene (if previously terminated) if unanticipated  
5 circumstances arise during incidental monitoring. Finally, the Council should reserve the  
6 right to decommission or require a particular turbine, or set of turbines, to be turned off for a  
7 period of time if any turbine, or set of turbines, is found to kill a disproportionate number of  
8 avian species during post construction monitoring.

9 **C. The Certificate should require strict monitoring of bat kills.**

10 There is limited information regarding the effect of turbines on bat mortality. Bats  
11 play an important roll in the ecosystem. See Exhibit 91 (KRB-T), Prefiled Testimony of Ken  
12 Bevis. No studies of bats were conducted at the KVVWPP site. Estimates of bat mortality are  
13 entirely calculated based on information from other wind power sites across the country. The  
14 Applicant has indicated that eco-monitoring and night vision studies are unreliable and were  
15 not a viable option for conducting pre-construction research for the abundance of bats using  
16 the proposed project area. Therefore, the Council should impose strict oversight on the bat  
17 monitoring program to ensure that the Applicant be held to strict compliance with its  
18 estimates. In that regard, the Council should decommission or require a particular turbine, or  
19 set of turbines, to be turned off for a period of time if any turbine, or set of turbines, is found  
20 to kill a disproportionate number of bat species during post construction monitoring.

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1 **III. CONCLUSION**

2 CFE takes no position regarding whether the KVVPP should be constructed. CFE's  
3 only objective is that the Applicant sufficiently mitigates the environmental impact of the  
4 project if EFSEC recommends approval of the project and the Governor certifies it. All  
5 mitigation measures proposed by the Applicant should be included as conditions of the  
6 Certificate. Further, the above argued conditions should be included in the Certificate to  
7 ensure responsible environmental stewardship of the site for the benefit of the citizens of the  
8 state of Washington.

9  
10 DATED this 9 day of November, 2006.

11 **ROB MCKENNA**  
12 Attorney General

13 

14 **MICHAEL S. TRIBBLE, WSBA # 30508**  
15 Assistant Attorney General  
16 Counsel for the Environment

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8 SAGEBRUSH POWER PARTNERS,  
9 LLC

CERTIFICATE OF SERVICE

10 KITTITAS VALLEY WIND POWER  
PROJECT

11 I, Nicole Teeter, certify that I served a copy of **Response to Applicant's Opening**  
12 **Brief, Proposed Final Order, and Proposed Site Certification Agreement** on all parties on  
13 the date below as follows:  
14

15 **Service To:**

**Service Perfected By:**

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5 I certify under penalty of perjury under the laws of the state of Washington that the  
6 foregoing is true and correct.

7 DATED this 9th day of November, 2006.

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