

Clay S. White
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Professional Experience: **Kittitas County Community Development**, Ellensburg, WA., November 2001 to present. Title: Planner II. Responsible for current and long range planning projects. Current Planning duties include the processing of Conditional Use Permits, Rezones, Flood Development Permits, Shoreline Permits, Development agreements and Subdivisions. Long Range duties include updating Counties Critical Areas Ordinance and Annual Comprehensive Plan Update. Currently managing complex projects that include three large-scale Windfarm applications both of which are going through the EIS process and a 209-lot subdivision within the Ellensburg UGA. I am accustomed and comfortable in speaking in front of large groups of people on controversial issues. Have incorporated new office workflow procedures into an expanding office that facilitates better coordination between office staff and the general public.

Engineering Certification Services, Vancouver, WA., March 2000 to September 2001. Title: Project Handler/Engineer. Responsible for up to 50 projects at one time for Engineering Certification Company. Responsibilities include marketing our services, handling projects, meeting with clients, supervising employees, and coming up with innovative methods for improved office production.

City of Black Diamond, Black Diamond, WA., June 1999 to March 2000. Title: City Planner. Responsible for all current and long range planning projects. Extensive public speaking while working with Planning Commission and City Council. Worked closely with City Administrator, Public Works Department, and Building Department to accomplish city goals. Long Range Planning Duties include work on Master Plan Development, Zoning Code Revisions, City design standards ordinance, and tree ordinance.

Kittitas County Planning Department, Ellensburg, WA., May 1997 to June 1999. Title: Planner 1. Responsible for current and long range planning projects which include: boundary line adjustments, exempt parcel segregation's, variances, short plats, conditional use permits, rezones, and flood permits. Extensive public speaking at Board of Adjustment, Planning Commission, and County Commissioner meetings. Long Range Planning Duties included revising KC Zoning Code and heading citizens committee to revise Open Range/Stock Restricted Areas.

Kittitas Reclamation District, Ellensburg, WA., November 1995 to March 1996.

Title: GPS Field Technician.

Natural Resources Conservation District, Ellensburg, WA., June 1995 to Sept. 1995.

Title: Soil Survey/Field Office Aide.

Education:

Graduated from Central Washington University in June of 1996 with:

Bachelor of Arts, Geography, Specialization in Resource Management.

Bachelor of Arts, Anthropology

**KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES
DEVELOPMENT ACTIVITIES APPLICATION**

PLEASE TYPE OR PRINT CLEARLY IN INK. ATTACH ADDITIONAL SHEETS AS NECESSARY. THE FOLLOWING ITEMS MUST BE ATTACHED TO THIS APPLICATION PACKET:

- ADDRESS LIST OF ALL LANDOWNERS WITHIN 300' OF THE SITE'S TAX PARCEL. IF ADJOINING PARCELS ARE OWNED BY THE APPLICANT, THE 300' EXTENDS FROM THE FARTHEST PARCEL. IF THE PARCEL IS WITHIN A SUBDIVISION WITH A HOMEOWNERS OR ROAD ASSOCIATION, PLEASE INCLUDE THE ADDRESS OF THE ASSOCIATION.
- SITE PLAN OF THE PROPERTY WITH ALL PROPOSED: BUILDINGS; POINTS OF ACCESS, ROADS, AND PARKING AREAS; SEPTIC TANK AND DRAINFIELD AND REPLACEMENT AREA; AREAS TO BE CUT AND/OR FILLED; AND, NATURAL FEATURES SUCH AS CONTOURS, STREAMS, GULLIES, CLIFFS, ETC. (PLAT APPLICATIONS EXCLUDED)
- KITTITAS COUNTY ENCOURAGES THE USE OF PRE-APPLICATION MEETINGS. PLEASE CALL THE DEPARTMENT TO SET UP A MEETING TO DISCUSS YOUR PROJECT.

THIS DEVELOPMENT ACTIVITIES APPLICATION IS USED TO APPLY FOR ONE OR MORE OF THE FOLLOWING APPROVALS.

1. Check all that apply to your project and complete those sections of the application:

- SECTION I. Zoning Structural Setback Variance - to place a structure closer to the lot line than allowed:
Residential front 15' side 5' rear 25'
Residential-2 front 15' side 5',10' rear 25'
Suburban, Sub-II front 25' side 15' rear 25'
Agriculture, Liberty front 25' side 5' rear 25'
Rural-3 front 25' side 15' rear 15'
Forest&Range-20 front 25' side 10' rear 10'
Commercial Forest front 200' side 200' rear 200'
 Fee - \$150

- SECTION II. Zoning Conditional Use Permit - proposing a use such as a bed & breakfast or campground.
 Fee - \$350

- SECTION III. Request to Rezone - to change from the existing zone to another zone.
 Fee - \$450

- SECTION IV. Shorelines Substantial Development/Conditional Use Permit - proposing a project greater than \$2,500 value w/in 200' of a water body listed in Section V.
 Fee - \$350

- SECTION V. Shorelines Structural Setback Variance - to place a structure closer than 100' of (*denotes portion of shoreline requiring 200' setback):

<i>Kachess River</i>	<i>Lake Keechelus</i>	<i>Lake Kachess*</i>
<i>Cabin Creek</i>	<i>Lake Cle Elum</i>	<i>Lake Easton</i>
<i>Log Creek</i>	<i>Cle Elum River</i>	
<i>Big Creek</i>	<i>Lost Lake*</i>	
<i>Little Creek</i>	<i>Unnamed Lakes (T.21 R.12)*</i>	
<i>Swauk Creek</i>	<i>Cooper Lake*</i>	
<i>Taneum Creek</i>	<i>Tucquala Lake*</i>	
<i>Teanaway River</i>	<i>Manastash Lake*</i>	
<i>(incl. West, Middle, North forks)</i>	<i>Manastash Creek (incl. South fork)</i>	
<i>Yakima River*</i>	<i>Naneum Creek</i>	
<i>Wilson Creek (so. of Eburg)</i>	<i>Columbia River*</i>	

 Fee - \$350

- SECTION VI. Flood Development Permit - for any construction or placement of buildings, mining, dredging, filling, grading, paving, excavation or drilling in the FEMA 100-Year Floodplain.
 Fee - \$10.00

- SECTION VII. Short Plat - to divide into 2-4 lots.
 Fee - \$190 plus \$10/lot Transportation; \$125 plus \$50/hr. over 2.5 hrs. Environmental Health; and, \$175 Planning.

- SECTION VIII. Long Plat - to divide into 5 or more lots.
 Fee - \$200 plus \$10/lot Transportation; \$625 plus \$50/hr. over 12.5 hrs. Environmental Health; and, \$400 Planning.

- SECTION IX. Public Facilities Permit: a written decision by the Planning Dept authorizing a public facility use to locate at a specific location
 Fee: \$350

- Section X. SEPA Environmental Checklist/Review - review required in conjunction with Sections II, III, IV, VIII. Or IX. Other development proposals may also
 Fee - \$100 initial

2. Name, mailing address and day phone of land owner(s) of record:

3. Name, mailing address and day phone of authorized agent, if different from land owner of record:

4. Contact person for application (select one): Owner of record Authorized agent
 All verbal and written contact regarding this application will be made only with the contact person.
5. Street address of property:
6. Legal description of property:
7. Tax parcel number:
8. Property size:
9. Narrative project description: describe project size, location, water supply, sewage disposal and all qualitative features of the proposal; include every element of the proposal in the description (be specific, attach additional sheets as necessary):

10. Application is hereby made for permit(s) to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agencies to which this application is made, the right to enter the above-described location to inspect the proposed and or completed work.

Signature of Authorized Agent

Date

Signature of Land Owner of Record (required for application submittal)

Date

Clay White

From: James Hurson
Sent: Tuesday, June 03, 2003 5:49 PM
To: 'Chris Taylor'
Cc: Clay White; 'dpeeples'
Subject: RE: follow up re. application

Apparently the answer to my question is: "Yes, Zilkha expects the County to drop everything else they are working on and respond immediately." I quite frankly, don't have time to play these games. I also don't have time (and do not intend to take the time) to correct every misstatement and mischaracterization that you included in your e-mail. If you were "very eager to proceed with the application process" why didn't you get it to us four months ago like we asked you to; when we would have had the time needed to process this in an appropriate fashion? The County staff is not going to drop everything else it has in order to somehow try and make up for Zilkhas extensive delay. I believe we have made that abundantly clear in previous conversations. It would be completely unfair and inappropriate to treat all of the other pending project applications in such a fashion.

As you know Chris, it has been a concern of mine for quite some time that Zilkha has plotted out some sort of strategy to delay getting an application to us as long as possible so the County lacks sufficient time to carry out its statutory duty. My concern has been that Zilkha will then try to force the County to accomplish its duty in an unreasonably short time frame and then go to EFSEC to seek an override of local land use planning and zoning when the County is unable to complete its work in that compressed timeframe. I've expressed that concern to Zilkha representative for quite some time. I've been repeatedly assured that is not the case. As the old saying goes, however, actions speak louder than words. Every action of Zilkhas appears to be completely consistent with the scenario I've described. I frankly haven't seen even one action by Zilkha that contradicts that concern. I've seen no good faith effort from Zilkha at any point to get us a timely and complete application that gives the County the time necessary to process the application in an appropriate time frame.

The county has been trying to get Zilkha to submit an application since January. You, Darrel Peeples, and I were talking about the lack of consistency issue within five minutes of the time you dropped by my office just a couple of days after you filed with EFSEC. I have repeatedly written letters and e-mails to Zilkha to try and get you to submit a timely and complete application. You have been repeatedly told that we need a timely and complete application. All that we have seen in response is delay, delay, and more delay. That delay is now being followed by pressure from you that Zilkhas application is to be responded to immediately and at the expense of all other applications.

Your e-mail is also yet another example of facts consistent with a strategy that I am concerned is taking place. You appear to be trying to make it look like you've been submitting things to us when you haven't. You make reference in this e-mail (and I believe also made reference to the EFSEC council at a prior meeting) to having an "application" that was "originally filed" on March 27th. What application? What you brought to the County in March was so defective that it defies description. It didn't have owner signatures, adjacent owner list, an application fee etc. As I recall, the cover letter even indicated that you were not even applying for a land use change. Planning pointed out some of the more glaring defects and sent it back to be fixed before they would take the time to review the whole document. Nearly two months later we still didn't have the complete information even though it had been pointed out repeatedly that key items were missing (such as owners signatures and adjacent property owner list). Whether your latest submittal is complete or not I do not know. Based upon Zilkhas track record of incompleteness I would suspect that Clay would find it necessary to completely review your latest submittal in its entirety to make sure it's complete.

Zilkha's record of incompleteness simply highlights my concerns that this is just a strategy with

an end game of seeking preemption. Nonprofessionals routinely seem to be able to fill out our rezone forms with fewer problems. Professionals in the wind farm industry also seem to have no difficulty dealing specifically with the land use and zoning forms related to wind farms. EnXco was able to get a complete application to us in January. That would seem to indicate that people in the wind energy industry are capable of filling out a complete county application and getting it to us in a timely fashion if they want to. If it's not just a ploy, how is it that enXco was easily able to accomplish the task of submitting a complete application with adjoiner list, signatures etc. yet Zilkha was unable to do so even though they had the enXco application to use a template?

The concern that this is simply a ploy has been once again bolstered by the recent "extension" request with EFSEC. EFSEC gave the parties 90 days from May 1 to attempt to resolve the inconsistency. Even if we were to assume that Zilkha has now finally submitted a complete application, we didn't get it until June 2. How is sitting on your application for another month and then agreeing to an "extension" an extension at all? It seems that this is just further evidence consistent with this strategy. It looks like it is intended to simply make it look like Zilkha is agreeing to more time to work on consistency when we have really gained no additional time. When talking with Darrel I believe I was quite clear that in my view talk was cheap and that I was looking for action to prove that this wasn't just some ploy. I was looking for action (not just talk) that gives the County "back" the time that it would have had if Zilkha had submitted an application back in January or early February like we had asked you to do. I understood that was what we were getting. I now find that all we have is a paltry 30-day "extension" coupled with a 31 day delay in submittal.

I have other work to do for the citizens of this County so do not intend to belabor this point any further at this time. I'm sure that Clay will get back to you in a timely fashion regarding the completeness (or not) of the application and any questions you have about the number of copies that are needed. I fear, however, that if my concerns are well founded all of this will simply be for naught. As I've said before, actions speak louder than words. These actions speak to a bad faith strategy to circumvent the local land use decision-making process. Please be assured that such a strategy will fail.

-----Original Message-----

From: Chris Taylor [mailto:ctaylor@zilkha.com]
Sent: Tuesday, June 03, 2003 10:37 AM
To: James Hurson
Cc: Chris Taylor; Clay White
Subject: RE: follow up re. application

Jim-

In response to your email below, the reason we thought it might be possible for Clay to get back to me yesterday is that this is not a new application and we have been in discussions with Clay and you regarding our application since we originally filed it on March 27th. Clay had already reviewed our application several times and provided very specific comments, to which we have responded.

The latest comments in Clay's last letter were limited to the labeling of the exhibits and the five paragraphs in Section 3 that explain the context of our County application within the broader framework of the EFSEC review process. We assumed that a quick review of the labeling of exhibits would not take more than a minute. Regarding the language in Section 3, we further assumed that this was already resolved, as I understood that you, Jim, told our attorney Tim McMahan last week that you would advise Clay and the Planning Department to accept our application with this language. We have not modified this language since you made that commitment and I have not heard from you that you have changed your position on this point.

We do have a question for Clay regarding the number of copies of our County application that we have been requested to provide. Clay's letter indicated we needed to submit 650 copies of the application. I understand that enXco was only required to provide 175 copies of their County application. Clay explained

to me on the phone that this number was based on: 1) the 300' adjoining property owners list; 2) EFSEC's interested persons list and 3) existing County planning department list of interested persons. The adjoining landowners list consists of less than 50 people. EFSEC has only distributed about 64 hard copies of our application. There is a much larger list of people who have requested that they receive NOTICE of ALL EFSEC actions, but these people have not requested copies of the application for our proposed project. It seems reasonable to assume that if these people have not requested a copy of the EFSEC application that they may not want copies of our County application. Adding up the people who have received copies of our EFSEC application and the adjoining property owners list indicates the need for about the same number of applications as enXco was requested to provide (150).

The cost to produce 650 bound copies of the County application is about \$6,000. We do not object to providing a reasonable number of copies so that the interested public has ready access to our application. However, given the information above, we are not convinced that such a large number is truly necessary at this point. We can always print additional copies at our expense if the County runs out.

We are very eager to proceed with the application process and appreciate your cooperation in responding as soon as possible.

Thanks.

Chris

Chris Taylor
Project Development Manager
Zilkha Renewable Energy

210 SW Morrison Street, #310
Portland, OR 97204
Tel: (503) 222-9400, x. 3
Fax: (503) 222-9404

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-----Original Message-----

From: James Hurson [mailto:JAMESH@co.kittitas.wa.us]
Sent: Monday, June 02, 2003 5:53 PM
To: Chris Taylor; Clay White
Cc: James Hurson
Subject: RE: follow up re. application

No, Chris, I do not think it's reasonable to expect that Clay will have reviewed the application by tomorrow morning. Is it your expectation that every time Zilkha drops off paperwork that its project is going to elbow its way to the front of the line of all the other applications and projects that planning is processing? If so, I would appreciate it if you explicitly confirm that unique position in writing.

-----Original Message-----

From: Chris Taylor [mailto:ctaylor@zilkha.com]
Sent: Monday, June 02, 2003 5:01 PM
To: Clay White

Cc: James Hurson

Subject: follow up re. application

Clay and Jim-

I am just following up on my last email. I have not heard back from either of you via email or phone today regarding our application to the County. I had hoped to get it to the printer today for reproduction, which is now probably not possible, but I would really like to get that started tomorrow. Is it reasonable for you to get us an answer by tomorrow morning? Thanks and feel free to call if you have questions or want to discuss the application.

Chris Taylor
Project Development Manager
Zilkha Renewable Energy

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Clay White
 Kittitas County Community Development Services
 411 N. Ruby Street
 Ellensburg, WA 98926

RECEIVED

NOV 4 2003

KITTITAS COUNTY
 CDS

October 30, 2003

RE: Process and Schedule for County Review of Kittitas Valley Wind Power Project

Dear Clay,

Thank you for taking the time to meet with me and Darrel Peeples on 10/15/03 to discuss the County's anticipated process for reviewing our land use application for the Kittitas Valley Wind Power Project (Project.) Based on the suggestions from you and Jim Hurson, we are working to develop a draft development agreement outline incorporating mitigations for the various issues you mentioned. We will share this with you once it is complete, which we expect will be in the next few weeks.

As we discussed on the telephone after the meeting, I prepared a draft schedule for the County's review process based on the steps and time frames that you described during our meeting on 10/15/03. For the purpose of this draft schedule, I have assumed that EFSEC will release the draft environmental impact statement (DEIS) on 11/17/03 and develop responses to comments within 6 weeks of the close of the comment period. I further assume that the County's dates would shift accordingly if either of these externally-driven dates changes. I am sending you a copy of this schedule for your review and comment. To be clear, the attached schedule is not Zilkha's recommendation, but reflects my understanding of your position.

In order to manage the overall Project, we need to have a definitive schedule of all steps in the process since many decisions and activities depend on the County's land use decisions. We need to know if this accurately reflects the County's proposed process and schedule. If not, please indicate what the accurate process and schedule are.

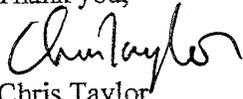
As I have mentioned previously, we remain eager to establish the specific process and timeline for County review of our application. As you may know, two major Washington utilities are currently seeking bids for wind power. One of the requirements in the bidding process is for us to state and explain the overall permitting schedule and expected on-line date for the Project. This makes it vitally important for us to understand and be able to plan around a definitive schedule for County review.

We have significant concerns regarding what we understand the proposed schedule and timeline to be. We are concerned about the overall length of the process, particularly given that the County does not have to complete any substantive or procedural SEPA roles. This would cause the EFSEC process to be delayed for many months, and would result in an overall EFSEC review time of more than 18 months, significantly longer than the 12 months called for in the EFSEC statutory guidance. This could potentially lead to loss of business opportunities and undermine

the viability of the Project. Are there ways in which we could accelerate this process? Perhaps eliminating some of the potentially redundant or unnecessary SEPA steps that are already built into the EFSEC process would accelerate the County review process and reduce the demands on the County.

We look forward to working with you and the County to develop a schedule and process that is fair and efficient and addresses the needs of both the County and Zilkha.

Thank you,



Chris Taylor
Project Development Manager

DRAFT Schedule for County Review of KVVPP
Based on 10-15-03 meeting with C. White, J. Hurson and Zilkha staff

Date	Action
1/13/03	EFSEC accepted Zilkha permit application
6/10/03	County accepted Zilkha land use application
11/17/03	DEIS Issued by EFSEC
12/10/03	Joint County/EFSEC Public Comment Meeting
12/15/03	End of DEIS Comment Period (30 days)
2/2/04	EFSEC/Shapiro prepare Response to Comments (42 days)
2/16/04	County Review of Responses to Comments and Notification of Administrative Acceptance of DEIS (7-14 days)
2/27/04	Appeal period for acceptance of DEIS (10 working days)
3/29/04	<ul style="list-style-type: none"> • If acceptance of the DEIS is <u>NOT</u> appealed - Preparation for Land Use Hearing (30 days) • Land Use Hearing (1-5 days of hearings)– Joint hearing with BOC and Planning Commission. Planning Commission and BOC would hear testimony on the substantive issues. After the testimony, the BOC would leave and Planning Commission votes on the Rezone, and Comprehensive Plan Amendment requests.
4/9/03	<ul style="list-style-type: none"> • If acceptance of the DEIS <u>IS</u> appealed - Preparation for BOC Appeal Hearing (42 days) • BOC holds Appeal Hearing (1-5 days of hearings) then proceed to steps above at same hearing (Planning Commission, public testimony, etc.)
4/27/04	Final Land Use Hearing (if no appeal of DEIS)- County staff processes the Planning Commission recommendation and transmits it the BOC (30 days). BOC holds land use hearing – may take public testimony or move directly to deliberation and vote (5-10 days of hearings)
5/10/04	Final Land Use Hearing (if DEIS is appealed) same steps as above (5-10 days).
6/4/04	BOC issues final written resolution on land use decision, transmits to EFSEC.

17.61.040 – 17.61A.010

G. The operation of some utilities and special utilities identified within this chapter may necessitate unusual parcel configurations and/or parcel sizes. Such parcels:

1. Need not conform with applicable zoning requirements; provided, they comply with the procedures provided in KCC Title 16, Subdivisions, and so long as used for a utility or special utility;

2. Are not eligible for any other use or any rights allowed to nonconforming lots in the event the utility or special utility use ceases;

3. Shall continue to be aggregated to the area of the parent parcel for all other zoning and subdivision requirements applicable to the parent parcel. (Ord. 2001-12 (part), 2001: Ord. 2000-06 (part), 2000; Ord. 99-14 (part), 1999: Ord. 98-17 (part), 1998).

17.61.040 Communication facilities – Administrative review – General requirements. A. Communication facilities may be authorized by the planning director as an administrative conditional use in all zoning districts, pursuant to the criteria and procedures of this chapter and KCC Title 15A. An administrative conditional use permit is not required for the operation of amateur or noncommercial communication equipment as defined by FCC regulations under Part 95D and Part 97 CFR (i.e., citizen band, ham radio).

B. Construction of all improvements shall be completed within one year of the date of permit issuance except as provided for in subsections E and F of this section.

C. The lot line setback requirements of this title may be waived by the planning director, in order to improve the facilities' reception and/or transmission capabilities or to achieve greater levels of audible or visual screening than that which would be available by using the applicable zone's yard requirements.

D. Communication facilities shall be designed to blend with existing surroundings; provided, no conflicts exist with existing Federal Communications Commission and the Federal Aviation Administration regulations relating to aircraft safety. This should be achieved through the use of compatible colors and materials, and alternative site placement to

allow the use of topography, existing vegetation or other structures to screen the proposed transmission support structure from adjacent lands.

E. The co-location of antennas on both existing and proposed transmission structures is encouraged. Communication antennas shall be permitted outright in all zoning districts provided the following:

1. An antenna shall not extend more than six feet horizontally from any structure to which it is attached.

2. An antenna shall not extend vertically more than 15 feet above the uppermost portion of the structure to which it is mounted or attached.

F. Modifications to, including the expansion of, existing approved communication facilities shall be outright permitted; provided, there is no increase in the height of the transmission tower. For purposes of this subsection, "transmission tower" means a pole or lattice-work structure specifically designed and intended to support antenna and related communication equipment. (Ord. 2001-12 (part), 2001: Ord. 2000-06 (part), 2000).

Chapter 17.61A

WIND FARM RESOURCE OVERLAY ZONE

Sections:

17.61A.010 Legislative findings, purpose and intent.

17.61A.020 Definitions.

17.61A.030 Development uses, requirements, and restrictions.

17.61A.040 Approvals required for wind farm resource overlay zone.

17.61A.010 Legislative findings, purpose and intent. The purpose and intent of this chapter is to establish a process for recognition and designation of properties located in areas of Kittitas County suitable for the location of wind farms, to protect the health, welfare, safety, and quality of life of the general public, and to

ensure compatible land uses in the vicinity of the areas affected by wind farms. (Ord. 2002-19 (part), 2002).

17.61A.020 Definitions. The following definitions shall be used in conjunction with the administration of this chapter:

A. "Wind farm" means a single wind turbine exceeding 120 feet in height above grade or more than one wind turbine of any size proposed and/or constructed by the same person or group of persons on the same or adjoining parcels.

B. "Wind turbine" means any machine used to produce electricity by converting the kinetic energy of wind to electrical energy. Wind turbines consist of the turbine apparatus and any other buildings, support structures or other related improvements necessary for the generation of electric power. (Ord. 2002-19 (part), 2002).

17.61A.030 Development uses, requirements, and restrictions. All listed permitted uses in the underlying zoning district of this overlay zone are permitted. All listed conditional uses in the underlying zoning district of this overlay zone are subject to conditional use permit process and review. Wind farms are a permitted use in a wind farm resource overlay zoning district, subject to the additional approval requirements and restrictions set forth in KCC 17.61A.040. (Ord. 2002-19 (part), 2002).

17.61A.040 Approvals required for wind farm resource overlay zone. A. A wind farm may be authorized by the county only through approval of a wind farm resource development permit in conjunction with approval by the board of county commissioners of a development agreement as authorized by Chapter 15A.11 KCC, Development Agreements, and RCW 36.70B.170 through 36.70B.210. Consistent with KCC 15A.11.020(B) and RCW 36.70B.170, the development agreement approved by the board of county commissioners must set forth the development standards applicable to the development of a specific wind farm, which may include, but are not limited to:

1. Densities, number, size, setbacks, and location of turbines;

2. Mitigation measures and such other development conditions as deemed appropriate by the board of county commissioners to be necessary including measures to protect the best interests of the surrounding property or neighborhood or the county as a whole; and

3. Other development standards including those identified in KCC 15A.11.020(E) and RCW 36.70B.170(3).

B. Required Applications/Approvals. In addition to approval of a wind farm resource development permit and a development agreement as set forth in subsection A of this section, a wind farm shall require the following approvals from the county:

1. A site-specific amendment of the comprehensive plan land use designation map to wind farm resource overlay district (the sub-area planning process described in Chapter 1 of the county comprehensive plan and Chapter 15B.03 KCC, Amendments to Comprehensive Plan, may be used if deemed appropriate by the applicant and county);

2. A site-specific rezone of the county zoning map to wind farm resource overlay zoning district pursuant to Chapter 17.98 KCC, Amendments.

C. The approvals by the board of county commissioners set forth in subsections A and B of this section shall only be made if it determined that:

1. The proposal is essential or desirable to the public convenience;

2. The proposal is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood; and

3. The proposed use at the proposed location(s) will not be unreasonably detrimental to the economic welfare of the county and it will not create excessive public cost for facilities and service.

D. A comprehensive plan amendment or subarea plan for a wind farm resource overlay district must be processed by the county concurrent with the rezone application, development

permit, and development agreement required for approval of a wind farm. (Ord. 2002-19 (part), 2002).

Chapter 17.62

PUBLIC FACILITIES PERMITS

Sections:

17.62.010 Definitions.

17.62.020 Purpose.

17.62.030 Procedures.

17.62.040 Decision criteria.

17.62.050 Minimum lot sizes.

17.62.060 Appeals.

17.62.010 Definitions. A. "Public facility" means the capital improvements and systems of transportation, law enforcement, fire protection, and recreational facilities (i.e., parks and playgrounds). Public facilities may be sited in any zoning, classification, subject to the review and approval requirements of this chapter.

B. "Public facility permit" means a written decision by the planning department authorizing a public facility use to locate at a specific location. (Ord. 2002-03 (part), 2002).

17.62.020 Purpose. The purpose of this chapter is to establish decision criteria and procedures for the permitting of public facilities and to provide coordinated review of the proposed project. Certain public facilities provide necessary services to other uses but are deemed unique due to factors such as siting criteria, size,

GPO 6.33 Encourage joint electric utility construction standards for all electrical infrastructure constructed in the UGA. In the interim, Puget Sound Energy and the Kittitas County Public Utility District will allow the City of Ellensburg to review any new construction in the UGA.

GPO 6.34 Wind Farms may only be located in areas designated as Wind Farm Resource overlay districts in the Comprehensive Plan. Such Wind Farm Resource overlay districts need not be designated as Major Industrial Developments under Chapter 2.5 of the Comprehensive Plan.

EXHIBIT-50-6 (CW-6)

Clay White

From: Irina Makarow [IrinaM@ep.cted.wa.gov]
Sent: Thursday, October 16, 2003 3:38 PM
To: Clay White; James Hurson (Business Fax); dpeeples@ix.netcom.com; ctaylor@zilkha.com
Subject: KV DEIS Response to comments

The answer is yes, we can produce a "response to comments" after the DEIS comment period. However, we would have to label it "draft" or "preliminary" pending the adjudicative hearings and the timing requirements of EFSEC WAC 463-47-060 (3).

We will work it into our contract with Shapiro & Associates. But, until we see exactly how many comments are received and their content, I can't make any promises on how long it will take, but we will do our best to get it out as quickly as possible.

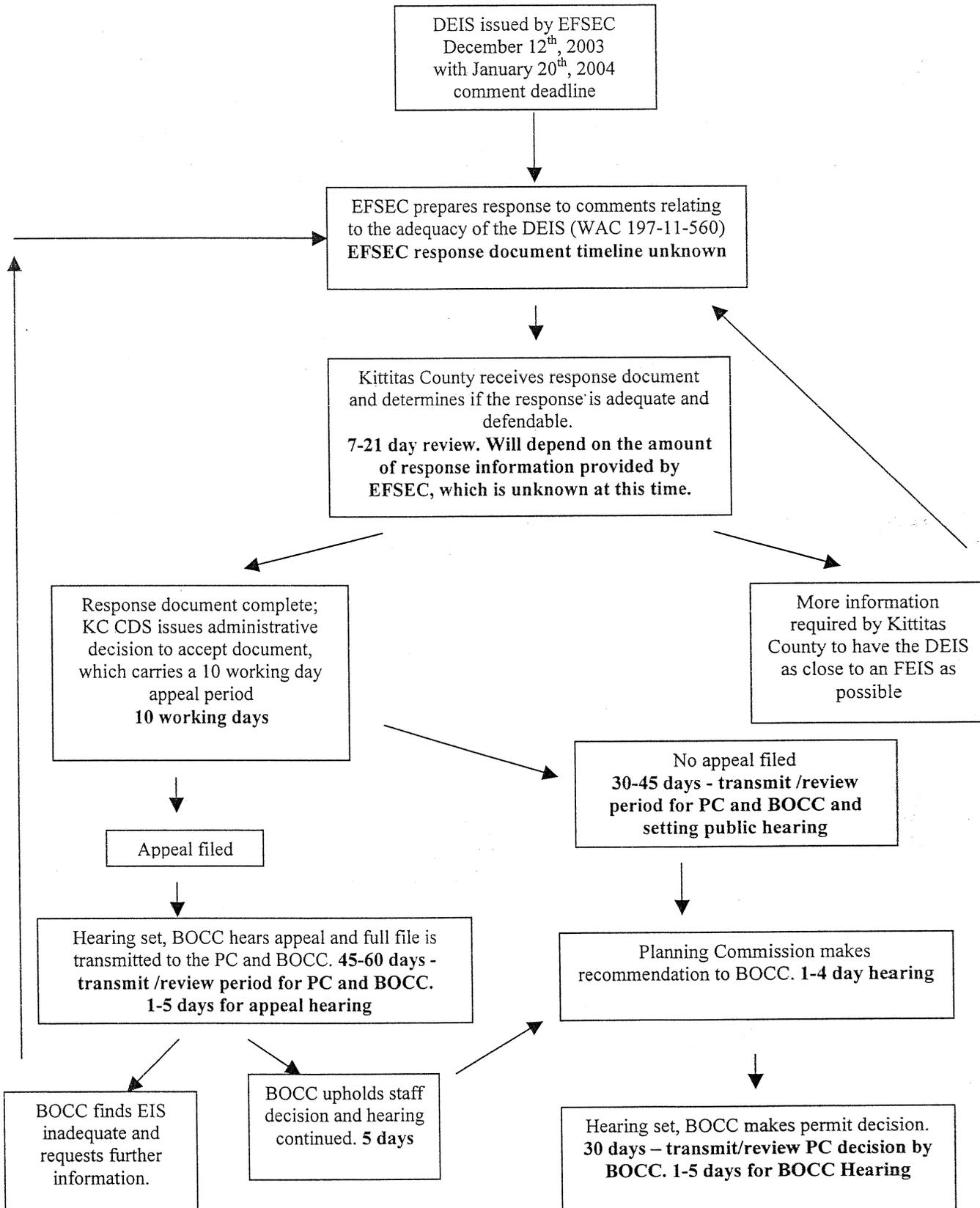
Irina

Irina Makarow
Siting Manager
EFSEC
P.O. Box 43172
Olympia, WA, 98504-3172

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(360) 956-2047
irinam@ep.cted.wa.gov

Possible timeline for processing the KV Wind Power project.
For informational purposes only



Kittitas County Code

15A.07.010

Chapter 15A.06

Chapter 15A.07

NOTICE OF DECISION

ADMINISTRATIVE
DECISIONS APPEALS

Sections:

- 15A.06.010 Notice of decision issuance.
15A.06.020 Order to include finding of fact.

Sections:

- 15A.07.010 Appeal of determination or decision.
15A.07.020 Procedures for closed record appeals.
15A.07.030 Procedures for open record appeals.
15A.07.040 Remand.
15A.07.050 Appeal of decision – Scope of authority.

15A.06.010 Notice of decision issuance.

A notice of decision shall be provided that includes a statement of any threshold determination made under Chapter 43.21C RCW (SEPA) and the procedures for administrative appeal, if any. The notice of decision may be a copy of the report or decision on the project permit application. For projects requiring planning commission review and board of county commissioner approval, the notice shall be the signed ordinance or resolution.

A. Kittitas County shall provide notice of decision in the same manner as the notice of application.

B. The notice of decision shall be provided to the following persons:

1. The applicant;
2. Any person who, prior to the rendering of the decision, specifically requested notice of the decision;
3. Any person who, prior to the rendering of the decision, submitted substantive comments on the application. (Ord. 2000-07; Ord. 98-10, 1998).

15A.06.020 Order to include finding of fact.

Kittitas County shall, in making an order, requirement, decision or determination, include in a written record of the case the findings of fact upon which the action is based. (Ord. 2000-07; Ord. 98-10, 1998).

15A.07.010 Appeal of determination or decision.

A. An appeal of an administrative land use decision shall be filed with the board of county commissioners within 10 working days of the date of the decision.

B. Appeals shall contain a written, concise statement identifying:

1. The decision being appealed;
2. The name and address of the appellant and his interest(s) in the matter;
3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;
4. The desired outcome or changes to the decision;
5. The appeals fee.

C. Upon the filing of a timely appeal, the administrator shall, in consultation with the appropriate hearing body chair pursuant to KCC 15A.01.040, set the time and place at which the matter will be considered. The officer from whom the appeal is being taken shall forthwith transmit to the reviewing body all of the records pertaining to the decision being appealed from, together with such additional written report as he deems pertinent. (Ord. 2000-07; Ord. 98-10, 1998).

1 solutions to issues raised by the public and by County officials. For example, we hired
2 leading experts to conduct studies on everything from wildlife to noise. We produced
3 visual simulations and made significant modifications — including removing turbines
4 entirely from Lookout Mountain (one of the best wind resource areas in the valley) — in
5 response to suggestions. The overall project was reduced from over 16,000 acres to just
6 over 7,000 acres.

7
8 Because of our commitment to resolving issues with Kittitas County, the decision to seek
9 preemption of the local zoning process was not an easy one. However, the process was
10 not working. Throughout our discussions with the County, we attempted to clarify the
11 local process. We sought a process that was clear and straightforward. The lack of
12 clarity regarding the County process, coupled with the multiplicity of appeal
13 opportunities available to opponents through the County's permitting regime, were major
14 reasons that we applied for our permit through the Energy Facility Site Evaluation
15 Council (EFSEC) and not the County wind permitting process, which is new and
16 untested. EFSEC's process is thorough and settled, having been created specifically for
17 reviewing energy projects and with a proven track record with everything from large
18 fossil-fuel burning generators to nuclear facilities. In fact, a major issue for us was
19 whether the EFSEC process is excessive for siting a wind farm.

20
21 Choosing EFSEC was never, as some opponents have suggested, an attempt to
22 circumvent local opinion or input. As the Applicant, we believe that this is self-evident,
23 when all EFSEC hearings on the project are held locally and the County has a voting
24

BOARD OF COUNTY COMMISSIONERS
WALLA WALLA COUNTY, WASHINGTON

IN THE MATTER OF A
DETERMINATION OF
NON-SIGNIFICANCE FOR
A REZONE FROM AG TO IH,
REQUESTED BY RANDALL
HARVEY

RESOLUTION NO. 93 420

WHEREAS, the request by Randall Harvey, PC-93-07, requires an environmental determination under the State Environmental Policy Act and Walla Walla County Title 18, and

WHEREAS, the County has an obligation under SEPA and Title 18 to protect and enhance both the human and the natural environments, and

WHEREAS, the Walla Walla County Environmental Review Committee has issued a Mitigated Determination of Non-Significance, based on the following:

1. A specific plan for the development of this site has not been decided at this time and therefore site development requirements such as fire flow have not been determined.
2. Development of this site for industrial purposes shall require further SEPA review.
3. Access to state highway 12 may require a permit from Washington Department of Transportation.
4. Access to Dodd Road is available but allows only limited sight distance east along Dodd Road toward Iowa Beef and will require county approval.
5. The proposed site is in close proximity to other developed lands zoned Heavy Industry.
6. The Comprehensive Plan designation of the site is Industrial, with the following Mitigating Measures:
 1. The property owner shall coordinate with Public Works Department and DOT prior to any road improvements, and

WHEREAS, the Planning Commission has concurred with the findings and recommendation of the ER Committee, and

WHEREAS, the Determination has been circulated for the required 15 days to the public and interested agencies, now therefore

BE IT RESOLVED by the Walla Walla County Board of Commissioners that the proposal, EA-93-18 will have a non-significant impact upon the environment, that they concur with the action and findings of the ER Committee.

Done this 5th day of October, 19 93

Attest: Connie R. Junt
Clerk of the Board.

Charles A. Marder
Chairman

Gene S. Juckey
Commissioner

Constituting the Board of County Commissioners
of Walla Walla County, Washington.



2002-05582
Page: 3 of 27
06/06/2002 02:45P

ZONING AMENDMENT NO. 204

AN ORDINANCE AMENDING TITLE 17, WALLA WALLA COUNTY CODE, SPECIFICALLY REZONING PROPERTY FOR RANDALL HARVEY, ROUTE 9, BOX 360, PASCO, WA FROM AG, AGRICULTURAL GENERAL TO IH, HEAVY INDUSTRIAL FOR PROPERTY LOCATED ON HIGHWAY 12, 1/2 MILE SOUTH OF DODD ROAD, NEAR WALLULA, WA, and

WHEREAS, the Walla Walla County Planning Commission held a public hearing on September 8, 1993, to consider the request and recommended to the Board of County Commissioners that the rezone request be approved based on the following findings and attached site plan:

- 1. Good planning practices suggest that it is justified to rezone property that is in the location of other property of the same zoning.
2. There has been a change in the character of the area since the area was zoned agricultural. Two other parcels have been rezoned to IH. In addition, much of the existing industrial land has been developed and some of it is no longer developable.
3. The rezone is in compliance with the Western Walla Walla Development Plan.
4. The rezone would be in the interest of the general welfare of the entire community, in that it would provide a location for future new industries to locate, and

WHEREAS, the Walla Walla Board of County Commissioners held a public hearing on October 4, 1993, to take additional testimony for and against the proposed rezone, now, therefore

BE IT RESOLVED that the Walla Walla Board of County Commissioners will uphold the recommendation of the Planning Commission based on its findings and approve the rezone from AG, Agricultural General to IH, Heavy Industrial, Docket #PC-93-07 as shown on the attached site plan for the following described real property:

Parcel A:

Tracts 37 to 44, both inclusive and Tract 53 to 60, both inclusive, of the plat of Pasco Power and Water Company's irrigated lands as recorded in Volume D of plats at page 8, records of Walla Walla County, lying in Section 34, T8N, Range 31, E4W, excepting from Tract 57 of said plat that portion thereof lying westerly of the easterly right of way line of SR12.

All those portion of Tracts 112 and 113 of Attalia Five Acre Tracts, according to the official plat thereof, lying easterly of the easterly right of way line of SR12, said portion of said tracts being situated in Section 33, T8N, Range 31, E4W.

Parcel B:

That part of Farm Unit 34, Irrigation Block 3, Columbia Basin Project Washington, according to the Farm Unit Plat thereof as recorded October 27, 1954 in Volume 8 of Plats at page 38, records of Walla Walla County, lying within the northeast quarter of Section 34, in T8N, Range 31, E4W, excepting therefrom the north 30 feet lying in Dodd Road as established in Volume 127 page 189, records of Walla Walla County, Washington, recorded April 23, 1981 under Auditor's File No. 8103223.

Parcel C:

All that portion of the southwest quarter of the northeast quarter of said Section 34 lying outside said Irrigation Block and westerly of the westerly right of way line of the Oregon-Washington Railroad and Navigation Company as shown on the Farm Plat of said Irrigation Block.

Done this 5th day of October, 1993

Attest: Lonnie R. Jasti, Clerk of the Board.

Charles A. Maiden, Chairman

Lewis L. Jacky, Commissioner

Comprising the Board of County Commissioners of Walla Walla County, Washington.



BOARD OF COUNTY COMMISSIONERS
WALLA WALLA COUNTY, WASHINGTON

ORDINANCE NO. 274

REGARDING A TECHNICAL NONSUBSTANTIVE CORRECTIONS TO THE COUNTY
COMPREHENSIVE PLAN LAND USE MAP(S), ZONING MAP(S) AND DEVELOPMENT
REGULATIONS

WHEREAS, Zoning Amendment No. 204 (Attachment #1) did approve Heavy Industrial zoning (IH) on property in what is now the Attalia Industrial Urban Growth Area, and

WHEREAS, Ordinance No. 262, Exhibit A (Attachment #2) did approve an amendment to the zoning code text of Title 17 for stationary thermal power plants, and

WHEREAS, Exhibit A (Ordinance. No. 262) will require non substantive formatting to incorporate into Title 17, and

WHEREAS, a technical correction to land use and zoning map(s) not involving substantive interpretations of the criteria for the various land use designations in the Walla Walla County Comprehensive Plan is necessary, as parcel level mapping was not available at the time the map(s) were developed, and

WHEREAS, a corresponding change to the implementing development regulations is necessary in the Attalia Industrial Urban Growth Area as designated in the County's Comprehensive Plan, and

WHEREAS, the above corrections may be considered as an exception to the annual amendment process as outlined pursuant to Chapter 14.10.030(4) of the Walla Walla County Code, and

WHEREAS, the Board of County Commissioners held a public hearing on June 3rd, 2002 to hear testimony for and against said request; now therefore

BE IT HEREBY ORDAINED by this Board of Walla Walla County Commissioners that they approve the technical changes to Comprehensive Land Use and Zoning Map(s) and the Development Regulations based on the findings and conditions contained in the original ordinances attached hereto as attachments #1 and #2, which are by this reference made a part hereof.

Done this 4th day of June, 2002.

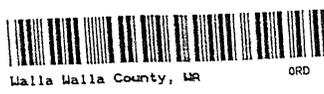
Attest: Connie R. Vinti
Connie R. Vinti, Clerk of the Board

Pam Ray
Pam Ray, Chairman

absent
David G. Carey, Commissioner

Charles A. Maiden
Charles A. Maiden, Commissioner

Constituting the Board of County Commissioners
of Walla Walla County, Washington



2002-06582
Page: 2 of 27
06/06/2002 02:45P

Walla Walla County, WA 0RD

I. REQUEST FOR A REZONE

- A. Applicant: Randall Harvey
PC-93-07
- B. Location of Request: Highway 12, 1/2 mile south of Dodd Road
- C. Nature of Request: Rezone property from AG, Agricultural General to IH, Heavy Industrial

II. BACKGROUND INFORMATION

- A. Comprehensive Plan Designation: Industrial
- B. Present Zoning: AG, Agricultural General. The property has been zoned AG since 1976, when it was rezoned from IH to AG
- C. Surrounding Zoning:
 - North - AG, Agricultural General and IH, Heavy Industrial
 - East - AG, Agricultural General and IH, Heavy Industrial
 - South - AG, Agricultural General
 - West - PR, Public Reserve
- D. Parcel Size: 180 acres
- E. Present Land Use: Agriculture. There is one residence on the property
- F. Surrounding Land Use:
 - North - Agriculture; Agri-Lite Composting
 - East - IBP and Feed lot; DNR Quarry is east on Dodd Road
 - South - Undeveloped
 - West - Public Reserve beyond Highway 12 and Burlington Northern Railroad. Boise Cascade is southwest on Highway 12
- G. Development Proposal:

The applicant is requesting the rezone to permit development for industry in the future

III. EVALUATION OF REQUEST

- A. Decision Making Criteria: Rezone
 - 1. When considering a rezone, the burden of proof is upon the applicant to show:
 - a. That the public health and safety, general welfare



and/or good planning and zoning practices justify the requested zone change.

- b. There has been a change in the character of the area since the last zone change that would justify the rezone.
- c. The rezone action is in compliance with the Comprehensive Plan.
- d. Planning Commission By-Laws and Rules of Procedure state in the preamble that: "amendments shall be made sparingly and only for the general welfare of the entire community".
- e. Local and state court decisions have established criteria and test by which rezones must be measured.

IV. ENVIRONMENTAL REVIEW COMMITTEE

The Walla Walla County Environmental Review Committee recommends that the proposal would have a non-significant impact upon the environment if mitigated. Please see attached ERC report.

V. DISCUSSION

1. The Western Walla Walla Comprehensive Plan lists the following objectives relating to industrial planning:
 - a. The areas identified as industrial land be reserved for that purpose.
 - b. Land use regulations of Walla Walla County be adopted to protect against incompatible development of industrial land.
 - c. The Port and local landowners be encouraged to locate industry within areas so identified as industrial.
2. Much of the vacant land currently zoned for industry is no longer developable due to wetlands regulations.
3. The Port desires to purchase this site to reserve it for future industrial use. The Port believes there is a need for industrially zoned property. The Port currently has 10 - 20 developable acres at the Burbank Port site and approximately 60 acres at Wallula Junction. There are no immediate plans to develop the site although the Port may install a road and a well prior to having a tenant committed to the site.
4. Access from Highway 12 to the site would be permitted by the Department of Transportation if spaced at a one mile



interval from Dodd Road. The County Public Works Department will review any development proposal in terms of impact to Dodd Road traffic.

- 5. Most of Walla Walla County's land designated for heavy industry is located in the western part of the County.
- 6. The Department of Natural Resources quarry land was rezoned from AG to IH in 1982 and the Agri-lite site was rezoned from AG to IH in 1981.

IV. RECOMMENDATION

- A. The staff recommends the rezone be approved based on the following findings:
 - 1. Good planning practices suggest that it is justified to rezone property that is in the location of other property of the same zoning.
 - 2. There has been a change in the character of the area since the area was zoned agricultural. Two other parcels have been rezoned to IH. In addition, much of the existing industrial land has been developed and some of it is no longer developable.
 - 3. The rezone is in compliance with the Western Walla Walla Development Plan.
 - 4. The rezone would be in the interest of the general welfare of the entire community, in that it would provide a location for future new industries to locate.

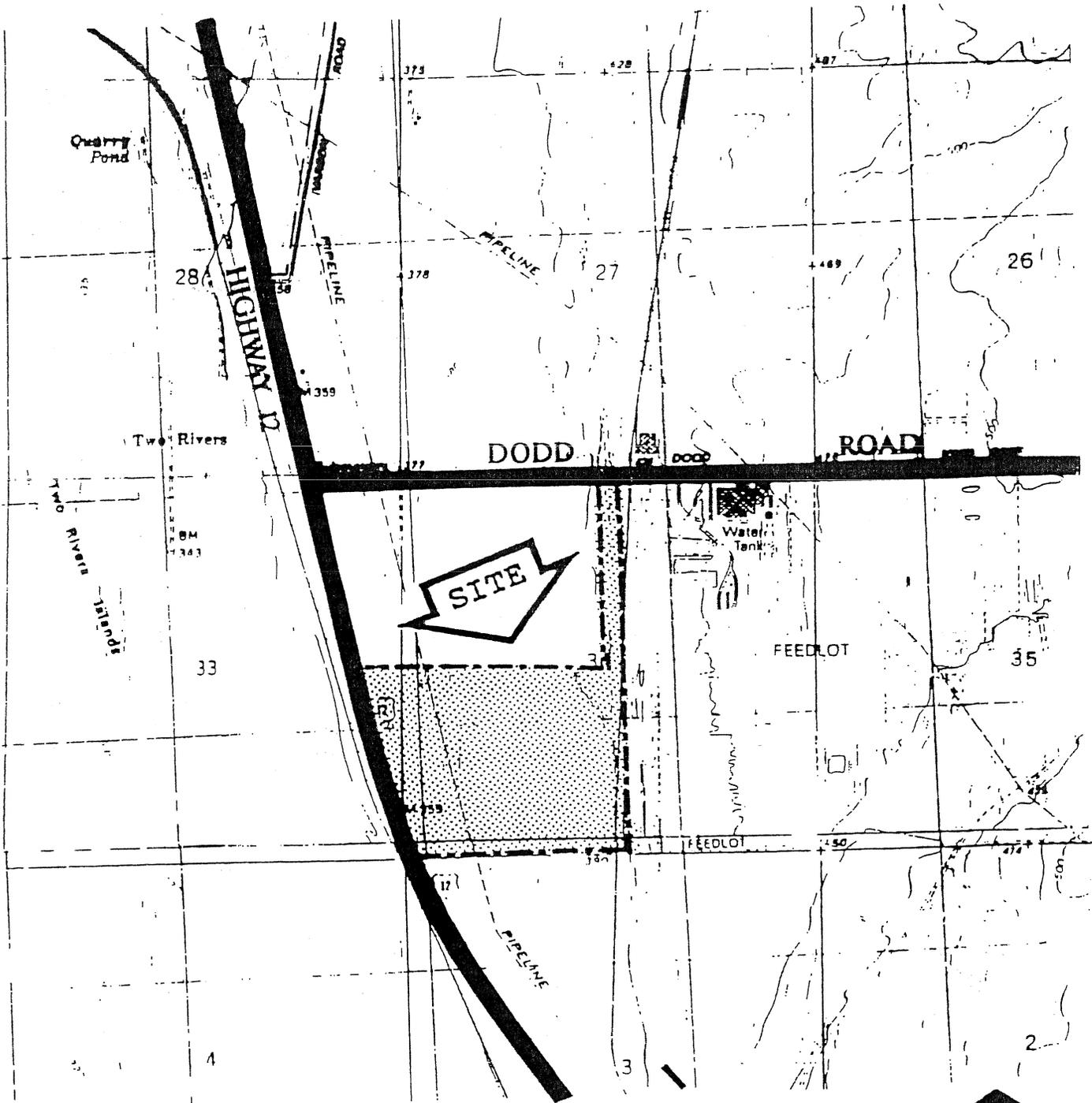




Walla Walla County, WA

ORD

EXHIBIT "D"



Applicant	Randall Harvey	FILED FOR RECORD IN WALLA WALLA CO. WASH.	Date	9/3/93
File No.	PC-93-07	BY _____	Drawn by	aes
Action Requested	Rezone from AG to	Oct 8 4 01 PM '93		
Location	On Highway 12, 1/2 mile south of Dodd Road	CLERK OF WALLA WALLA COUNTY AUDITOR		

BOARD OF COUNTY COMMISSIONERS

WALLA WALLA COUNTY, WASHINGTON



2002-06582
Page: 9 of 27
06/06/2002 02:45

IN THE MATTER OF A REQUEST BY)
NEWPORT NORTHWEST FOR A ZONING)
CODE TEXT AMENDMENT)
)

Walla Walla County, WA ORD
ORDINANCE NO. 262

104068

WHEREAS, application has been made by Newport Northwest for a zoning code text amendment for stationary thermal power plants, and

WHEREAS, the Planning Commission held a public hearing on March 7, 2001 to consider the request and recommends to the Board of County Commissioners that the Zoning Code Text Amendment be approved based on the following findings and conditions:

Findings:

1. The Zoning text amendment would benefit both the public and the applicant in that it would eliminate the need for completion of two environmental impact statements and would allow for a thorough review process at the state level through the EFSEC siting process.
2. The text amendment is in accordance with the heavy industrial zoning that is currently in place within the County.
3. The text amendment would allow for timely siting of gas powered power plants and would satisfy a public need in the western United States by ultimately resulting in construction of plants that would add power into the regional power structure.

Conditions:

The planning commission recognizes that this amendment would rescind some control of a project at the local level as the County would become only one of many participants with personal/agency interests on the EFSEC Committee. Because the Planning Commission recognizes that state agency interests do not always reflect local interests and concerns and to ensure the adequacy of the permitting process in addressing the needs of Walla Walla County, the following conditions will apply:

1. All applicants must enter into agreements with the County for the prepayment of taxes (e.g. property taxes) or mitigation of impacts on the County and its taxing districts;
2. All applicants must participate fully in the EFSEC siting process including the Potential Site Study (PSS); Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS), and Final Environmental Impact Statement (FEIS);
3. The applicant shall enter into such Memoranda of Understanding with the County for studies identified as necessary by the County prior to the local compliance

hearing held by EFSEC pursuant to RCW 80.50.090 (1) and (2) as now or hereinafter amended.

- 1. Additional costs and impacts identified in the EFSEC/EIS process or in subsequent actions taken thereto, that financially affect the County and that are not mitigated adequately through taxing authorities, may be mitigated through impact fees, and/or cost-sharing agreements.

- 2. Exhibit A:



2002-06582
Page: 10 of 27
06/06/2002 02:45P

Walla Walla County, WA ORD

17.08.540 Definitions:

Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities.

17.16.010 Tabulation of permitted uses:

Allowed Use: Stationary power plants as defined in 17.08.540 will be allowed in the Heavy Industrial Zone subject to the following conditions:

- 1. All applicants must enter into agreements with the County for the prepayment of taxes (e.g. property taxes) for mitigation of impacts on the County and its taxing districts;
- 2. All applicants must participate fully in the EFSEC siting process including the **Potential Site Study (PSS); Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS), and Final Environmental Impact Statement (FEIS).**
- 3. The applicant shall enter into such Memoranda of Understanding with the County for studies identified as necessary by the County prior to the local compliance hearing held by EFSEC pursuant to RCW 80.50.090 (1) and (2) as now or hereinafter amended.
- 4. Additional costs and impacts identified in the EFSEC/EIS process or in subsequent actions taken thereto, that financially affect the County and that are not mitigated adequately through taxing authorities, may be mitigated through impact fees, and/or cost sharing agreements.
- 5. The applicant shall pay additional staff salaries for those persons employed by Walla Walla County related to the EFSEC siting process together with such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing.

and

WHEREAS, the Board of County Commissioners held a public hearing on March 26, 2001 to hear testimony for or against said request; now therefore

BE IT HEREBY RESOLVED by this Board of Walla Walla County Commissioners that they approve the zoning code text amendment for Newport Northwest, Docket Number RC-01-0238 based on the findings and conditions above.

Done this 26th Day of March, 2001.

absent

Chairman

Attest:

Connie R. Vitti

Clerk of the Board

[Signature]

Commissioner

[Signature]

Commissioner

Constituting the Board of County
Commissioners of Walla Walla County, Washington

FILED FOR RECORD
IN WALLA WALLA COUNTY WASH
BY W.W.C. Commissioner
APR 25 11 32 AM '01

KAREN MARTIN
COUNTY AUDITOR



Walla Walla County, WA

ORD

2002-06582
Page: 11 of 27
06/06/2002 02:45P

BOARD OF COUNTY COMMISSIONERS
WALLA WALLA COUNTY, WASHINGTON

IN THE MATTER OF A REQUEST BY)
NEWPORT NORTHWEST FOR A ZONING)
CODE TEXT AMENDMENT)

01098



2002-06582
Page: 12 of 27
06/06/2002 02:45P

Walla Walla County, WA

ORD

WHEREAS, application has been made by Newport Northwest for a zoning code text amendment for stationary thermal power plants, and

WHEREAS, the Planning Commission held a public hearing on March 7, 2001 to consider the request and recommends to the Board of County Commissioners that the Zoning Code Text Amendment be approved based on the following findings and conditions:

Findings:

1. The Zoning text amendment would benefit both the public and the applicant in that it would eliminate the need for completion of two environmental impact statements and would allow for a thorough review process at the state level through the EFSEC siting process.
2. The text amendment is in accordance with the heavy industrial zoning that is currently in place within the County.
3. The text amendment would allow for timely siting of gas powered power plants and would satisfy a public need in the western United States by ultimately resulting in construction of plants that would add power into the regional power structure.

Conditions:

The planning commission recognizes that this amendment would rescind some control of a project at the local level as the County would become only one of many participants with personal/agency interests on the EFSEC Committee. Because the Planning Commission recognizes that state agency interests do not always reflect local interests and concerns and to ensure the adequacy of the permitting process in addressing the needs of Walla Walla County, the following conditions will apply:

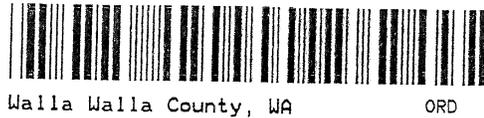
1. All applicants must enter into agreements with the County for the prepayment of taxes (e.g. property taxes) or mitigation of impacts on the County and its taxing districts;
2. All applicants must participate fully in the EFSEC siting process including the **Potential Site Study (PSS); Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS), and Final Environmental Impact Statement (FEIS);**
3. The applicant shall enter into such Memoranda of Understanding with the County for studies identified as necessary by the County prior to the local compliance

hearing held by EFSEC pursuant to RCW 80.50.090 (1) and (2) as now or hereinafter amended.

HUGONORTHWEST

1. Additional costs and impacts identified in the EFSEC/EIS process or in subsequent actions taken thereto, that financially affect the County and that are not mitigated adequately through taxing authorities, may be mitigated through impact fees, and/or cost-sharing agreements.

2. Exhibit A:



2002-06582
Page: 13 of 27
06/06/2002 02:45P

17.08.540 Definitions:

Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities.

17.16.010 Tabulation of permitted uses:

Allowed Use: Stationary power plants as defined in 17.08.540 will be allowed in the Heavy Industrial Zone subject to the following conditions:

1. All applicants must enter into agreements with the County for the prepayment of taxes (e.g. property taxes) for mitigation of impacts on the County and its taxing districts;
2. All applicants must participate fully in the EFSEC siting process including the **Potential Site Study (PSS); Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS), and Final Environmental Impact Statement (FEIS).**
3. The applicant shall enter into such Memoranda of Understanding with the County for studies identified as necessary by the County prior to the local compliance hearing held by EFSEC pursuant to RCW 80.50.090 (1) and (2) as now or hereinafter amended.
4. Additional costs and impacts identified in the EFSEC/EIS process or in subsequent actions taken thereto, that financially affect the County and that are not mitigated adequately through taxing authorities, may be mitigated through impact fees, and/or cost sharing agreements.
5. The applicant shall pay additional staff salaries for those persons employed by Walla Walla County related to the EFSEC siting process together with such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing.

and

WHEREAS, the Board of County Commissioners held a public hearing on March 26, 2001 to hear testimony for or against said request; now therefore

BE IT HEREBY RESOLVED by this Board of Walla Walla County Commissioners that they approve the zoning code text amendment for Newport Northwest, Docket Number PC-01-02, based on the findings and conditions above.

Done this 26th Day of March, 2001.

absent

Chairman

Attest:

Connie R. Vitti

Clerk of the Board

[Signature]

Commissioner

[Signature]

Commissioner

Constituting the Board of County
Commissioners of Walla Walla County, Washington



2002-06582
Page: 14 of 27
06/06/2002 02:45P

WALLA WALLA COUNTY PLANNING COMMISSION
RESOLUTION NO. 01-06

Docket No: PC-01-02

WHEREAS, application has been made by Newport Northwest for a zoning code text amendment for stationary thermal power plants, and

WHEREAS, the Planning Commission held a public hearing on March 7, 2001 to consider the request and recommends to the Board of County Commissioners that the Zoning Code Text Amendment be approved based on the following findings and conditions:



2002-06582
Page: 15 of 27
06/06/2002 02:45P

Walla Walla County, WA

ORD

Findings:

1. The Zoning text amendment would benefit both the public and the applicant in that it would eliminate the need for completion of two environmental impact statements and would allow for a thorough review process at the state level through the EFSEC siting process
2. The text amendment is in accordance with the heavy industrial zoning that is currently in place within the County.
3. The text amendment would allow for timely siting of gas powered power plants and would satisfy a public need in the western United States by ultimately resulting in construction of plants that would add power into the regional power structure.

Conditions:

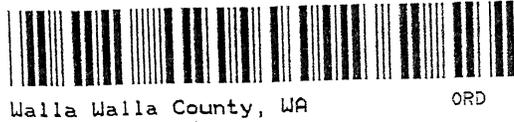
The planning commission recognizes that this amendment would rescind some control of a project at the local level as the County would become only one of many participants with personal/agency interests on the EFSEC Committee. Because the Planning Commission recognizes that state agency interests do not always reflect local interests and concerns and to ensure the adequacy of the permitting process in addressing the needs of Walla Walla County, the following conditions will apply:

1. All applicants must enter into agreements with the County for the prepayment of taxes for mitigation of impacts on the County and its taxing districts;
2. All applicants must participate fully in the EFSEC siting process including the **Potential Site Study (PSS); Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS), and Final Environmental Impact Statement (FEIS);**
3. All applicants for the EFSEC siting process may be subject to County required studies in order to assist in assessing the impacts of certain aspects of land use.

This is to ensure that processes not adequately addressed or that do not coincide with the timing of the EFSEC process may be assessed at the local level.

1. Additional costs and impacts identified in the EFSEC/EIS process or in subsequent actions taken thereto, that financially affect the County and that are not mitigated adequately through taxing authorities, may be mitigated through impact fees, and/or cost-sharing agreements.

2. Exhibit A:



2002-06582
 Page: 16 of 27
 06/06/2002 02:45P

7.08.540 Definitions:

any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities.

7.16.010 Tabulation of permitted uses:

Allowed Use: Stationary power plants as defined in 17.08.540 will be allowed in the Heavy Industrial Zone subject to the following conditions:

1. All applicants must enter into agreements with the County for the prepayment of taxes for mitigation of impacts on the County and its taxing districts;
2. All applicants must participate fully in the EFSEC siting process including the **Potential Site Study (PSS); Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS), and Final Environmental Impact Statement (FEIS).**
3. All applicants for the EFSEC siting process may be subject to County required studies that assist in assessing the impacts of certain aspects of land use. This is to ensure that processes not adequately addressed or that do not coincide with the timing of the EFSEC process may be assessed at the local level.
4. Additional costs and impacts identified in the EFSEC/EIS process or in subsequent actions taken thereto, that financially affect the County and that are not mitigated adequately through taxing authorities, may be mitigated through impact fees, and/or cost sharing agreements.
5. The applicant shall pay additional staff salaries for those persons employed by the county commissioners related to the EFSEC sitting process together with such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing.

WHEREAS, THE Board of County Commissioners reviewed the public record on March 26, 2001.

Now therefore,

BE IT RESOLVED, by the Walla Walla County Planning Commission that they recommend the Board of County Commissioners approve the zoning code text amendment for Columbia REA, Docket Number, PC-01-02 based on the findings and conditions above.

Mike Fredrickson

Mike Fredrickson, Chairman
Walla Walla County Planning Commission

Dated: 3/22/01



Walla Walla County, WA

ORD

2002-06582
Page: 17 of 27
06/06/2002 02:45P

REQUEST FOR A TEXT AMENDMENT TO WALLA WALLA COUNTY ZONING CODE¹

- I. APPLICANT: Newport Northwest
- II. NATURE OF REQUEST: Request to amend Title 17 of the County Code to read as shown in Exhibit A

III. DISCUSSION

- A. The applicant is requesting a zoning code text amendment to allow stationary thermal (gas powered) power plants in heavy industrial zones. This amendment would allow for plants with a generating capacity of 250,000 kilowatts or more that have received certification from the Washington State Energy Facility Site Evaluation Council pursuant to chapter 80.50 of the Revised Code of Washington.
- B. The ESEC Site Certification Process requires production of a detailed application and a full environmental impact statement.
- C. Currently, this use would require a Conditional Use Permit (CUP) under Walla Walla County Code. The CUP would require approval, approval with conditions, or denial from the Walla Walla County Planning Commission. The Washington State Environmental Policy Act would result in a determination of significance for this type of project and an Environmental Impact Statement would be required at the local level for the project to go to a CUP hearing before the Planning Commission. However, an inherent flaw exists in the conflict between this requirement and RCW 80.50.180 which reads as follows:

Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW.

- D. The applicant is requesting the amendment in order to resolve the dilemma inherent in this process, that the applicant would have to produce an Environmental Impact Statement prior to the EFSAC process, for approval of "local zoning compliance" via the CUP process.

IV. Overview of the EFSEC Review Process

A. The Potential Site Study: A pre-application analysis

The purpose of a Potential Site Study (PSS) is to identify environmental, health and safety, social, or regulatory issues related to locating a proposed major energy facility at a proposed site. In addition to this initial environmental assessment, a Potential Site Study will assist the future



applicant in knowing what environmental and other impacts must be addressed and the level of information that must be included in a site application. This information will be developed as a **work plan or criteria document** that will be used to format an application that will satisfy the Council's filing requirements and those of the state Environmental Policy Act (SEPA). It is the Council's intent that these requirements be fully integrated in a single document: the **Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS)**.

The Potential Site Study will also provide for *extensive involvement of state, local, and federal agencies, tribes, non-governmental organizations, and the opportunity for public input* in discussing the possible effects of a proposed project. This early participation of interested stakeholders is viewed as a key to assisting an applicant develop a formal Application for Site Certification that avoids or mitigates potential impacts, while ensuring that adequate information is available to assess a proposal.

These **pre-application** activities that are conducted as part of the Potential Site Study are designed to provide for the full disclosure, scoping, and assessment of project impacts, and the involvement of interested agencies and persons, prior to submittal of an application. This up front work is very important to the overall process and is viewed both as a way to streamline the state's siting process, while allowing for the more efficient use of applicant and agency resources.

B. Integrated ASC/pDEIS: Preparation, Submittal and Review

Based on the work plan prepared as a result of the Potential Site Study, the applicant will complete any additional studies required by the Potential Site Study, and will prepare an integrated ASC/pDEIS.

C. The applicant will then submit the integrated ASC/pDEIS to the Council.

This will initiate the EFSEC application review process, which will include the following steps:

- Notification of the project mailing list that the document has been filed with the Council.
- Distribution of the integrated ASC/pDEIS to state agencies and stakeholders for review;
- Making copies of the integrated ASC/pDEIS available for public reference at local libraries;
- To ensure that the information in the integrated ASC/pDEIS is complete and objective, EFSEC's independent consultants, Jones & Stokes, will review this document and submit their findings to EFSEC (as required by RCW 80.50.071-1.a).



- Within 60 days of receipt of the integrated ASC/pDEIS, the Council will hold an **Initial Public Meeting** on the proposed project. The meeting will be held in the vicinity of the proposed project after notifying public officials, publishing public notices, and issuing news releases. The initial public meeting has several purposes:
 - To inform the public of the proposed project and of the Council's review process;
 - To determine the proposed project's consistency with local land use ordinances;
 - To invite the public to comment on the integrated ASC/pDEIS.

D. Environmental Impact Statement

Based on the information gathered during the review of the integrated ASC/pDEIS by the Council's consultant, and the public comments received at the Initial Public Meeting, EFSEC will finalize the ASC/pDEIS and will issue the document for public comment pursuant to SEPA. The public will be notified when the document is issued and will have the opportunity to comment at public hearings and via written comments.

EFSEC will address the issues and comments raised by the integrated ASC/DEIS public comment process, for inclusion in a **preliminary Final EIS** (pFEIS). The preliminary FEIS will be entered as evidence for the Council's consideration during the Adjudicative Hearings to follow. The Final EIS is prepared after the Adjudicative Hearings have been completed to incorporate any additional evidence presented to the Council. The Council will consider the final EIS in their deliberations. EFSEC will provide notice to all interested persons when the Final EIS has been issued.

E. Adjudicative Proceedings

EFSEC's certification process calls for the Council to hold formal hearings on the proposed project to allow the applicant and opponents to present information to support their cases. The purpose of the adjudication is for the Council to resolve remaining issues and make a siting recommendation to the Governor.

These trial-like hearings, or "Adjudicative Proceedings," are conducted according to Revised Code of Washington (RCW) Chapter 34.05. These provisions emphasize the right of all parties to a fair hearing, and the requirement for legal due process in the administration of the hearing. To participate in the hearings, parties likely to be affected by impacts of the proposed energy facility, petition the Council for "intervenor" status.

F. Intervention and Counsel for the Environment

Interested persons, Indian Tribes, public or environmental groups, or local, state, or federal agencies may petition the Council to become **intervenors** in the proceedings. Participants who are granted legal status as intervenors have the opportunity to call expert witnesses, examine and cross-examine witnesses, and join all aspects of the legal process.



Another participant is the *Counsel for the Environment*, a state appointed Assistant Attorney General, whose role in the hearings is to represent the broad interests of all Washington citizens and their interest in protecting the quality of the environment.

G. Adjudicative Hearings

The extensive adjudicative hearings cover contested issues or project impacts, including environmental, socioeconomic, and public safety concerns. Through examination and cross-examination by the Applicant, Intervenor, Counsel for the Environment, and EFSEC members themselves, each potential impact is examined in great detail. Parties and intervenors have legal counsel represent them during the hearings.

The testimony and exhibits introduced during these proceedings are the basis for the record the Council will refer to when determining whether to recommend project approval or disapproval to the Governor. Information from these proceedings is also used to determine conditions for construction and operation of the project. The applicant must meet these conditions if the Governor approves the project.

H. Air and Water Discharge Permits

In tandem with the adjudicative proceedings, the Council initiates its process for developing air emissions and water discharge permits. The Council is required by state and federal law to prepare draft Prevention of Significant Deterioration (PSD) and National Pollutant Discharge Elimination System (NPDES) discharge permits for public comment. The Environmental Protection Agency (EPA) has delegated responsibility for issuing PSD and NPDES permits to the Council for projects under EFSEC jurisdiction. Any permit issued would meet all local, state, and federal Clean Air Act or Clean Water Act standards.

The Wallula Power Project will be required to obtain a Prevention of Significant Deterioration (PSD) permit which will establish the conditions and limits of permitted air emissions. The proponent may also require an NPDES permit for discharging wastes into the state's waters during construction and operation of the project.

I. Council Considerations

After the close of the hearings, EFSEC Council members will study the record at length. They will carefully weigh all the evidence before them, and then will recommend to the Governor whether to approve or deny the project application. If the Council finds the project should proceed, it will recommend to the Governor that the project be approved. The Council will develop a Site Certification Agreement (SCA) to be signed by the Governor. The SCA has all of the environmental, social, economic, and engineering conditions the applicant must meet for construction and operation throughout the life of the project.



If the Council finds the project will have significant impacts that cannot be mitigated, or it is not in the best interest of the state, it will recommend to the Governor that he deny the project.

The Governor has 60 days to consider the Council's recommendation and can take one of the following actions:

- Approve the Council recommendation, and execute the draft SCA;
- Deny the application;
- Direct the Council to reconsider certain aspects of the project.

J. Opportunities for Public Involvement

EFSEC's review process includes the following opportunities for public comment and involvement:

- Open Houses
- Environmental Scoping Meetings
- Potential Site Study Public Workshop
- Initial Public Information Meeting and Land-Use Consistency Hearing*
- Integrated ASC/DEIS Public Written Comments and Hearing
- Adjudicative Public Witness Testimony Hearings*
- Draft Air (PSD) and Water (NPDES) Discharge Permit Written Comments and Hearings
- Written Comments to EFSEC

K. The role of Bonneville Power Administration (BPA)

EFSEC is required by the State Environmental Policy Act to consider the impacts of associated facilities that are not being proposed by the project proponent, but that may be required as a result of the facility being approved by the Governor.

Electrical transmission line upgrades built and operated by the Bonneville Power Administration (BPA) would constitute such associated facilities. Environmental Review of any new transmission lines required by BPA as a result of this proposed project would be coordinated between BPA and EFSEC. Please refer to the BPA insert that is part of this information package for more information.

V. DECISION MAKING CRITERIA

Four conditions must be met in order for a text amendment to be approved:

- The proposed amendment must benefit the public health, safety, general welfare of the County;
- The proposed amendment must be of public necessity;
- The proposed amendment must constitute good planning and zoning practices;
- The proposal must be in conformance with applicable comprehensive plan policies.



VI. FINDINGS

The following findings are applicable

1. The proposed amendment benefits the public health, safety, and general welfare because approval of the amendment would allow for additional power to be placed into the Regional Power Grid. Due to recent deregulation of the Energy Industry, and other factors, the need for additional power in western United States is a much debated topic, that has received a vast amount of media attention in recent months. A 3/1/01 Conversation between this department and Dick Watson, Director of the Northwest Power Planning Council confirmed that the following goals have been set by the Northwest Power Planning Council:

- 3000 megawatts of electricity should be added to the grid by 2003 (of which 1100 megawatts are currently under construction) (See Exhibit B).
- Recognize that electricity is a commodity and encourage the use of mechanisms that reduce risk.
- Evaluate options for encouraging development of new power plants. It is not clear that the market will support development of sufficient resources to ensure an adequate and reliable power supply under conditions like those experienced this summer.
- Develop the demand side of the market. The Bonneville Power Administration, Portland General Electric and others already are implementing pilot programs to pay their largest customers to reduce their demand for power when prices reach a certain level and supplies are tight.
- Revisit regulatory practices in California..
- Improve data collection and dissemination.
- Develop emergency procedures in the event of an actual power-supply emergency.

2. The proposed amendment is of public necessity because of the reasons detailed in the above finding.

3. The proposed amendment constitutes good planning and zoning practices in that the affected heavy industrial location properties are located in areas the County that are largely industrial and agricultural with few surrounding commercial or residential activities. Three major areas of the County are currently zoned industrial (See exhibit C):

- Property in the Dodd Road area—This area is zoned for both light and heavy industrial use. This property is also located in the Industrial Urban Growth Area as identified in the Draft Comprehensive Plan. This is an area intended for a mix of heavy and light industrial with a mix of agriculture.



- Property in the Burbank Industrial Area—This port owned property comprises approximately 20 acres and is located at the confluence of the Columbia and the Snake River
- Property in the Snake River area downstream of Ice Harbor Dam—This property is in a general local that is owned by the Corps of Engineers. It appears to have been zoned industrial to allow for river traffic related port activity.

VII. RECOMMENDATIONS:

Staff recommends that the Planning Commission approve the Zoning Code Text Amendment with the following findings and conditions:

Findings:

1. The Zoning text amendment would benefit both the public and the applicant in that it would eliminate the need for completion of two environmental impact statements and would allow for a thorough review process at the state level through the EFSEC siting process
2. The text amendment is in accordance with the heavy industrial zoning that is currently in place within the County.
3. The text amendment would allow for timely siting of gas powered power plants and would satisfy a public need in the western United States by ultimately resulting in construction of plants that would add power into the regional power structure.

Conditions:

The planning commission recognizes that this amendment would rescind some control of a project at the local level as the County would become only one of many participants with personal/agency interests on the EFSEC Committee. Because the Planning Commission recognizes that state agency interests do not always reflect local interests and concerns and to ensure the adequacy of the permitting process in addressing the needs of Walla Walla County, the following conditions will apply:

1. All applicants must enter into agreements with the County for the prepayment of taxes for mitigation of impacts on the County and its taxing districts;
2. All applicants must participate fully in the EFSEC siting process including the **Potential Site Study (PSS); Integrated Application for Site Certification/preliminary draft Environmental Impact Statement (ASC/pDEIS), and Final Environmental Impact Statement (FEIS);**



3. All applicants for the EFSEC siting process may be subject to County required studies that assist in assessing certain aspects of the impacts of this land use. This is to ensure that processes not adequately addressed or that do not coincide with the timing in the EFSEC process may be assessed at the local level.

4. Additional costs and impacts identified in the EFSEC/EIS process or in subsequent actions taken thereto, that financially affect the County and that are not mitigated adequately through taxing authorities, may be mitigated through impact fees, and/or cost-sharing agreements.



2002-06582
Page: 25 of 27
06/06/2002 02:45P

The applicant shall pay additional staff salaries for those persons employed by the county commissioners related to the EFSEC sitting process together with such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing.



Clay White

From: James Hurson
 Sent: Wednesday, February 12, 2003 11:11 AM
 To: David Taylor; Clay White
 Subject: FW: Kittitas Valley Wind Project

comments?

-----Original Message-----

From: dpeeples [mailto:dpeeples@ix.netcom.com]
 Sent: Tuesday, February 11, 2003 8:57 PM
 To: James Hurson
 Subject: RE: Kittitas Valley Wind Project

Jim,

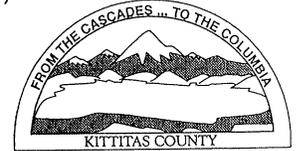
Thank you for your E-Mail of 2/10/03 and the conversation we had on 2/6/03 when I first received your letter. As I stated in that conversation, my client has intended all along to work closely with the County to resolve any and all land use consistency issues. As I explained to you on 2/6/03, I had originally considered filing an application with the County for a text change in the zoning ordinance, along the lines of what Walla Walla County adopted for the Wallula project that EFSEC recently reviewed. I am not entirely wedded to that idea and am willing to sit down and discuss all reasonable alternatives. I have a concern about going through duplicative hearing processes and stretching out the time of the county process to six months or beyond. Neither my client nor I have been given any clear indication of how long the County's proposed process is expected to take. Your E-mail heightens my concern about the length of time a duplicative county process might take.

I believe the intent of the EFSEC process is land use consistency in the more traditional zoning sense as opposed to a siting process. The ordinance recently adopted by Kittitas County is essentially a siting ordinance. It contemplates developing project-specific criteria, rather than overall zoning criteria for a particular purpose. To a great extent, it duplicates the substantive and procedural elements of the EFSEC siting process. I believe the EFSEC regulations regarding local land use consistency contemplate reasonable efforts to resolve the issue in the more traditional zoning context, not in a siting context. If the County also goes through its own project-specific siting process, then the purpose and intent of the EFSEC process is undermined.

It was with this in mind that I originally contemplated a text amendment similar to what was adopted by Walla Walla County.

However, as I stated above, I am not wedded to the text amendment concept if our concerns can be otherwise satisfied. Kittitas County's present proposal does not satisfy those concerns due to the duplication of siting processes and hearings and an uncertain and potentially lengthy timeline. We would like to sit down with you and perhaps representatives of EFSEC to see if we can work out an alternative that better meets everyone's needs. We would like to do that as soon as possible and will meet at any time. As I told you last Thursday, I will be out of the country from February 17 to March 9. But I do not believe my absence should hold up discussions. Chris Taylor is available, and if Zilkha needs an attorney, I have made arrangements for a colleague, Chuck Lean, to cover for me. I also will be available via E-Mail or telephone while I am out of the country.

I am looking forward to working with you on this matter and am hopeful we all can be creative and reach a result that will work for all of us.



Kittitas County Prosecuting Attorney

GREGORY L. ZEMPEL

KITTITAS COUNTY COURTHOUSE
205 WEST FIFTH, ELLENSBURG, WA 98926-3129
TELEPHONE (509) 962-7520
FAX (509) 962-7022
SCAN 460-7520

Deputies:

L. Candace Hooper
James E. Hurson
Margaret P. Sowards
Douglas R. Mitchell
Mark D. McClain

February 5, 2003

Darrel L. Peeples
Attorney at Law
325 Washington Street. #440
Olympia, WA 98501

Re: Kittitas County Wind Power Project

Dear Mr. Peeples:

When you spoke with me just days after your client filed its application with EFSEC, you were quite emphatic in your assurances that the only reason the EFSEC approach was been pursued is the abbreviated appeal process. It was your view that the appeal process following an EFSEC decision could take maybe only a year while the Growth Management Act and Land Use Petition Act appeal processes could take up to perhaps five years. I take you at your word that the appeal time frame is the only reason. As explained in more detail below, I propose a process and procedure that I believe is required to comply with the EFSEC process. It will also satisfy your clients desire for the more expedited appeal process of EFSEC, eliminates a great deal of uncertainty in legal outcomes, and returns decision making authority to the local jurisdiction where this project is proposed to be located.

Zilkha's application before EFSEC currently lacks consistency with the Kittitas County existing land use plans and zoning ordinances. Wind farms are allowed in our county, but only if they are located within a Wind farm Resource Overlay Zone. No part of Zilkha's proposed wind farm is, however, properly zoned Wind farm Resource Overlay Zone. The proposed wind farm is located on lands zoned Forest and Range 20 and Agricultural 20. Wind farms are neither a permitted nor a conditional use in either of these zones.

As you are well aware, consistency with local land use regulation is one of the first issues addressed by EFSEC in its process. RCW 80.50.090 requires that the council conduct a public hearing subsequent to the initial informational public hearing. WAC 463-28-030 sets forth the adopted regulatory process followed by the council:

"[When] any portion of a site is not consistent and in compliance with existing land use plans or zoning ordinances in effect at the date of the application, the following procedures shall be observed: (1) As a condition necessary to continue processing the application, it shall be the responsibility of the applicant to make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance."

As such, these regulations require that Zilkha apply for the rezone to Wind farm Resource Overlay Zone since that is the only way that Zilkha can “make the necessary application for change in, or permission under, such land use plans or zoning ordinances.”

The regulation under WAC 463-28-040 then go on to provide that if Zilkha is unable to resolve noncompliance then Zilkha can file a written request for preemption. That request is required to address the following:

- (1) That the applicant has demonstrated a good faith effort to resolve the noncompliance issues.
- (2) That the applicant and the local authorities are unable to reach an agreement which will resolve the issues.
- (3) That alternate locations which are within the same county and city have been reviewed and have been found unacceptable.
- (4) Interests of the state as delineated in RCW 80.50.010.

Those requirements cannot be satisfied without the submission and processing of a land use application by your client. A refusal to seek a rezone would be inconsistent with a good faith effort to resolve noncompliance. Our local authorities can only resolve this inconsistency issue by processing an application submitted by your client seeking a change in the land use designation. EnXco just last week submitted a rezone request for Kittitas County to designate several thousand acres just east of the Zilkha project as a Wind farm Resource Overlay Zone. That would contradict any assertion that alternative locations within this county have been reviewed and found unacceptable.

The need for consistency is a fundamental factor in the EFSEC process. It appears, in fact, that all of the projects that have been approved by EFSEC were consistent with the local land use regulations. They all appear to have involved the applicant seeking and obtaining land use consistency prior to approval. Even the last EFSEC application impacting our county included a proactive approach by Olympic Pipeline regarding consistency. Olympic pursued land use change amendments in our county. The expansion of the City of Kittitas urban growth area boundaries and land use designations to accommodate their proposed terminal near the City of Kittitas was approved by both Kittitas County and the City of Kittitas.

Whether or to what extent preemption of local land use regulation is allowed is still a matter of debate. This issue is still unanswered by the court. (Which is not surprising if the projects EFSEC has approved in the past are consistent with local land use regulations). The Growth Management Act was adopted in the early 1990’s and places a great emphasis on local land use planning and local decision makers evaluating numerous competing policy issues. These locally adopted policies are ones that state agencies may not simply ignore. (“State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter.” RCW 36.70A.103). Even if the courts were to conclude that the GMA mandates do not “trump” an EFSEC preemption, public policy considerations would clearly weigh against preemption except in extraordinary circumstances. A refusal by your client to even seek the required consistency (particularly when we are putting you on notice of this concern and providing you with a roadmap for compliance early in the process) weighs greatly against any argument for preemption.

In applying for the proper land use consistency, your client is essentially in a “no lose” situation. There are two scenarios for a rezone request: 1) the county approves the land use change or 2) the county denies the land use change. Regardless of outcome, your client’s position is strengthened in the EFSEC process:

1) *Scenario where land use change approved:* If the county approves the land use change, the development agreement we would develop through such a process would serve as the mitigation agreement with local jurisdictions that the EFSEC process encourages. With an approval, your client would have a project that is consistent with local land use and contains a mitigation agreement acceptable to the local jurisdiction. Those could be presented to the EFSEC council for their consideration and recommendation to the governor. The governor's decision would then be subject to the expedited appeal available under the EFSEC process and consistency would not be an issue if there were any legal challenge.

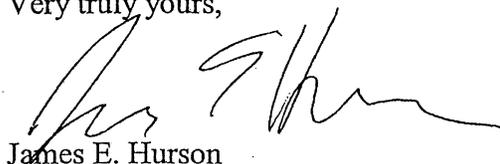
2) *Scenario where land use change denied.* If the county denies the land use change, your client would be in position to demonstrate a good faith effort to resolve noncompliance and an inability to reach an agreement to resolve issues. Both of those findings are required by the applicable regulations. Those factors would strengthen your client's position to urge that EFSEC and the governor should preempt local land use regulations.

I see little advantage for your client to simply ignore this issue and attempt to bypass the local land use consistency requirement. If they do, a year from now the EFSEC recommendation will be on the Governor's desk, but there will be inconsistency with the local land use regulations. Someone will, no doubt, pull out a copy of this letter and show it to the Governor. They will, no doubt, point out that a year ago the applicant was advised of the consistency issue and a means to resolve it in good faith and without delay. They will, no doubt, point out that even with that notice, the applicant refused. They will, no doubt, point out that the important policy objectives of the Growth Management Act should not be tossed aside simply because an applicant chooses to ignore them. They will, no doubt, urge that the Governor abide by his longstanding support of the GMA. They will, no doubt, urge that the Governor deny certification for failure of the applicant to seek consistency when the local jurisdiction offered early on to address that issue.

This letter is not intended to invite confrontation and litigation. I'm sure that we as attorneys can argue the relative strengths and merits of the various citations, opinions, and scenarios I've addressed. The point of them is to highlight that there are numerous legal and public policy issues involved and great risk if your client does not seek land use consistency. It is intended to get this project back on track for land use consistency compliance early in the process. With a timely application by your client, this county can fulfill its statutory and legal duty and address your client's proposal on the merits in a timely and public manner.

I believe that the approach I have proposed is in the best interest of everyone. I'd appreciate it if you can give me a call so that we can discuss this matter further.

Very truly yours,



James E. Hurson
Chief Civil Deputy Prosecuting
Attorney for Kittitas County

Cc: Board of County Commissioners
Community Development Services

-----Original Message-----

From: James Hurson [mailto:JAMESH@co.kittitas.wa.us]
Sent: Monday, February 10, 2003 3:40 PM
To: 'dpeeples@ix.netcom.com'
Cc: David Taylor
Subject: Kittitas Valley Wind Project

> Darrel:

> I'm sure by now that you and your client have had a chance to go
> over the letter I sent to you last week. The purpose of that
> correspondence is to get your client moving forward regarding the
> consistency issues. From our conversation, I understand that we agree
> that there is a lack of consistency. From the County perspective, the way
> to seek consistency is clear. We have a zoning land use process in place
> to seek that consistency. An application for the land use change needs to
> be made with the County so that it can be processed.

> A delay by your client in making application for the zoning and land
> use change required to obtain consistency serves only to delay the time
> that my clients can make a decision on that land use request. I cannot
> give you any assurances as to exactly how long such a land use request
> decision will take. I can assure you, however, that if your client had
> submitted the necessary land use request documents to the county on the
> same day that it filed with EFSEC, we would be four weeks closer to a
> decision by this county on the zoning issues than we are today. If your
> client waits another four, ten or 20 weeks to make the necessary land use
> application, such a delay will simply delay my clients ability to make a
> decision on that request by another four, ten or 20 weeks.

> This county has in place all of the necessary tools for your client
> to seek land use consistency in a timely, fair and open manner. We stand
> ready and willing to process such an application when it is submitted.
> Please let me know when we can expect to receive that submittal.

/s/ Jim Hurson

Clay White

From: James Hurson
Sent: Friday, February 14, 2003 4:42 PM
To: Clay White
Subject: FW: Kittitas Valley Wind Project

-----Original Message-----

From: James Hurson
Sent: Friday, February 14, 2003 4:41 PM
To: 'dpeeples'
Cc: David Taylor
Subject: RE: Kittitas Valley Wind Project

Darrel:
I considered sending you a lengthy response to your e-mail, but at this point I think I've already made my position clear enough. If your client wants to further delay the progress on their project, that's their choice. Go ahead and have Chris Taylor contact Dave Taylor and have them set up a meeting sometime the week of February 24th with myself and our planning department representatives. (the week of February 17 is totally booked or me) I am sure that any time the week of the 24th that works in Dave's schedule will also work in mine. I believe that for reasons of appearance of fairness and for restrictions related to exparte contact, no EFSEC representatives can or should be present.

/s/ Jim Hurson

Clay White

From: Chris Taylor [ctaylor@zilkha.com]
Sent: Wednesday, February 26, 2003 1:56 PM
To: dtaylor@co.kittitas.wa.us; Irina Makarow ; Allen Fiksdal ; JAMESH@co.kittitas.wa.us; clayw@co.kittitas.wa.us
Cc: Chris Taylor
Subject: Follow up meeting with County, EFSEC, Zilkha re. land use consistency

Dave, Jim and Clay-

Thanks for meeting with me yesterday to discuss the local land use consistency issue. I felt it was a productive meeting and helped me to understand better the County's concerns. I am drafting a brief summary of our meeting which I will send to you once it is completed for your records.

As I suggested yesterday, I contacted Allen Fiksdal at EFSEC to see if he would be available to meet with us so that we can try to get all three parties (County, EFSEC, Zilkha) on the same page regarding the issues of local land use consistency and SEPA process. There were several areas we covered yesterday where I believe it would be very helpful for everyone involved if EFSEC staff were present to share their perspective.

I know we are all eager to move forward and in that spirit, I would like to propose a meeting next Thursday, March 6th, in Ellensburg. Allen and Irina are coming over for a site tour that day (which reminds me, I would be happy to take Clay, Dave or Jim out to our site any time you want) and could meet right after lunch.

Would early afternoon on 3/6 work for the County? Also, if you feel it is appropriate, please feel free to invite one of the commissioners.

Thanks,

Chris Taylor

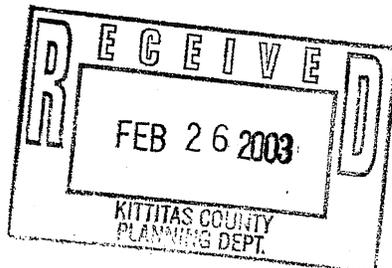


EXHIBIT-50-16 (CW-16)

James Hurson

From: James Hurson
Sent: Tuesday, March 04, 2003 3:21 PM
To: Chris Taylor; James Hurson
Cc: dpeeples; Clay White; David Taylor; n3vey@winlink.org
Subject: RE: Follow up meeting with County, EFSEC, Zilkha re. land use consistency

Chris:

Since you have referenced your e-mail attachment as a "summary" of the meeting I feel that I am obligated to point out for the record that it is inaccurate and incomplete and therefore is in no way a document that accurately reflects the conversations that occurred. The errors I noted in a cursory review are glaring. For example, there is no mention to the fact that David Taylor told you that he is not going to meet with EFSEC to coordinate the SEPA issues until we have your application in hand. (that was the reason for my previous e-mail that took your prior e-mail as an indication that you would be submitting your application in the next few days) There is also no mention of the facts that we discussed regarding the reasons for the need of an application. As I'm sure you remember me saying, if your client, for example, wants the flexibility to withdraw from the EFSEC process if the County were to approve the rezone (and if no one appealed the decision) that would be a completely different set of legal issues than if your application clearly and explicitly required EFSEC approval even with a County approval. As I'm sure you recall, when I asked you if your client wanted to be restricted or retain that flexibility, you told me that you didn't know and would have to check with your client. There are numerous other comments and omissions in your "summary" that I also disagree with, but do not intend at this time to take the time to detail them.

Frankly Chris, I just don't get what it is that you are trying to accomplish. We've made it abundantly clear that all we are trying to do is get the application so we can process it in a timely fashion. We need your application to get that started. If the issue is that your staff doesn't know how to fill out the application the county staff will be happy to explain that further. We don't know how our SEPA review will be coordinated with the EFSEC SEPA process until we know what we are reviewing. How those will be coordinated will also be undoubtedly linked to how far we are into the EFSEC process by the time Zilkha submits its' application. On June 11, 2002 Zilkha sent us a schedule that indicated they would be filing their application with the County on June 25, 2002. Here we are eight months later and you still haven't filed your application. I have no idea when Zilkha will ever get around to filing one. I certainly am not going to attempt to sort out how a theoretical application with unknown constraints will be coordinated at each and every theoretical point in the future with the EFSEC SEPA process. The policy choices regarding what limits you will place on your application and when it will be submitted are solely within the control of Zilkha.

As to meeting with the EFSEC staff on Thursday that isn't going to be necessary. I've found that I frequently can get more accomplished with a 15 minute phone call than with a two hour meeting. As such I talked to Irina and Allen over the phone yesterday about these coordinating issues. I've assured them that as soon as we get Zilkhas application, they will be one of the first people we call so we can sort out how proceed based upon the application that you submit. Allen didn't see a need for us to all meet on Thursday under the circumstances. (but I did tell him that if he changed his mind he and Irina could stop by and say "Hi" and we could talk some more)

Further delay in submitting your application only further delays my clients ability to process it. Please submit it so that we can get moving and get this on track for a timely local land use decision.

-----Original Message-----

From: Chris Taylor [mailto:ctaylor@zilkha.com]
Sent: Monday, March 03, 2003 10:03 AM
To: James Hurson
Cc: dpeeples; Clay White; David Taylor; Chris Taylor; n3vey@winlink.org
Subject: RE: Follow up meeting with County, EFSEC, Zilkha re. land use consistency

6/29/2004

Jim-

As promised, attached is a summary of our meeting last week. I am copying Dave and Clay so they also have copies.

During our meeting last week, I felt I was explicit that we (Zilkha) are also eager to move forward on the land use consistency issue but that we want to have a clear mutual understanding regarding process, timeline, and interface with EFSEC's process before submitting any application. Such a mutual understanding MUST include EFSEC, as any local land use process regarding this project is part of the broader EFSEC site certification process. Your email did not seem to reflect this, and I want to be very transparent regarding our position. I frankly can't see any reason why it would be premature to meet jointly with EFSEC and the County right away to ensure we have a consensus regarding the process, especially given the many potential SEPA compliance scenarios that have been mentioned as possibilities by the County.

We remain flexible and are open to any reasonable process that meets the needs and requirements of all parties concerned. If you and or Dave can make a meeting this Thursday when Allen and Irina from EFSEC are in Ellensburg, we could hopefully come to an agreement that satisfies all parties and then Zilkha could apply to the County for land use approval.

We don't believe it is unreasonable to propose one joint meeting of the County, EFSEC staff and us to discuss this very important issue. I really hope that you will agree such a meeting is in the best interests of all concerned. Thanks.

Chris

Chris Taylor
Project Development Manager
Zilkha Renewable Energy

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Portland, OR 97204
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Fax: (503) 222-9404

222 E. 4th St.
Ellensburg, WA 98926
Tel. (509) 962-1122
Fax: (509) 962-1123

Mobile: (509) 899-4609

-----Original Message-----

From: James Hurson [mailto:JAMESH@co.kittitas.wa.us]

Sent: Thursday, February 27, 2003 12:09 PM

To: Chris Taylor; David Taylor; Irina Makarow; Allen Fiksdal; James Hurson; Clay White

Cc: 'dpeeples'

Subject: RE: Follow up meeting with County, EFSEC, Zilkha re. land use consistency

Chris:

I take your e-mail as an indication that Zilkha will have its land use application to us within the next few days. I reach that conclusion because I know that all of us

6/29/2004

in the meeting clearly understood that the County needs to have that land use application before we will be meeting with EFSEC staff to coordinate our SEPA efforts.

I see this apparent commitment to get an application to us within the next day or two as a positive sign. As you know, we have been telling Zilkha for weeks that the County needs to receive that application so that it can be processed in a timely manner. Further delay by Zilkha in submitting it would only further delay its own project. Timely submittal of the land use application is just good common sense.

Since we don't yet have the land use application, I think setting up a meeting with EFSEC staff to work out those coordinating issues is a bit premature. Once you've submitted the application, our planning staff will set up a time with EFSEC staff to sort out how we will coordinate the SEPA issues.

/s/ Jim Hurson

-----Original Message-----

From: Chris Taylor [mailto:ctaylor@zilkha.com]

Sent: Wednesday, February 26, 2003 1:56 PM

To: dtaylor@co.kittitas.wa.us; Irina Makarow ; Allen Fiksdal ; JAMESH@co.kittitas.wa.us; clayw@co.kittitas.wa.us

Cc: Chris Taylor

Subject: Follow up meeting with County, EFSEC, Zilkha re. land use consistency

Dave, Jim and Clay-

Thanks for meeting with me yesterday to discuss the local land use consistency issue. I felt it was a productive meeting and helped me to understand better the County's concerns. I am drafting a brief summary of our meeting which I will send to you once it is completed for your records.

As I suggested yesterday, I contacted Allen Fiksdal at EFSEC to see if he would be available to meet with us so that we can try to get all three parties (County, EFSEC, Zilkha) on the same page regarding the issues of local land use consistency and SEPA process. There were several areas we covered yesterday where I believe it would be very helpful for everyone involved if EFSEC staff were present to share their perspective.

I know we are all eager to move forward and in that spirit, I would like to propose a meeting next Thursday, March 6th, in Ellensburg. Allen and Irina are coming over for a site tour that day (which reminds me, I would be happy to take Clay, Dave or Jim out to our site any time you want) and could meet right after lunch.

Would early afternoon on 3/6 work for the County? Also, if you feel it is appropriate, please feel free to invite one of the commissioners.

Thanks,

Chris Taylor

**Summary of Meeting re. Kittitas Valley Wind Power Project EFSEC Application
and Local Land Use Consistency**

Persons Present: Dave Taylor and Clay White- Kittitas County Community Development Services, Jim Hurson-Kittitas County Prosecuting Attorney's office, Chris Taylor, Zilkha Renewable Energy

Date: Tuesday, 2-25-03.

Location: Kittitas County Permit Center Offices

Chris Taylor opened by explaining that Zilkha Renewable Energy (ZRE) requested the meeting with Kittitas County representatives to discuss the issue of local land use consistency.

This was followed by a quick review of other potential outstanding County issues related to the project. Issues identified were:

Building permits- Dave's department now includes both planning and building permit functions. Dave expressed that since the turbines themselves are pre-engineered structures, the only real building permit issues for the County will be for the turbine foundations and the O&M facility. He suggested this should not be very complicated for the County.

County Roads- If ZRE proposes to use County ROWs alongside roads for installing underground cable or create new driveways off of County roads (Hayward and Bettas), then we should contact Mr. Paul Bennett, County Public Works Director.

Decommissioning Assurance- Clay White asked what ZRE proposed in terms of providing assurance that adequate funds would be available for decommissioning the wind farm. Chris indicated that the EFSEC application proposed to set up a decommissioning bond or other insurance-type mechanism that would build up over time (as the likelihood of decommissioning increased.) Clay asked if this would be held by the County or EFSEC, Chris responded that ZRE did not have a position on that issue, that the County and EFSEC should discuss those details.

Septic system and well- Would need permits from County Environmental Health department.

Returning to the issue of local land use consistency, Chris expressed the concern that following the County's process for wind farm permitting (re-zone/comprehensive plan change/development agreement) might result in significant duplication of SEPA process and review between EFSEC and the County. He asked how the County proposed to avoid such duplication.

Dave Taylor responded that the County should serve as the lead agency for SEPA and that EFSEC could then adopt the County's SEPA document. He said that because EFSEC's process calls for adopting the final SEPA document after the adjudicatory hearings near the end of the review process, the County would not have a SEPA document available (from EFSEC) for its land use decision. Therefore, he felt the County would need its own SEPA document to support the land use decision.

Dave and Jim also said the County is not convinced that either enXco's or ZRE's proposed projects will require an EIS to be prepared. He said it was possible that the County would issue a Determination of Non-Significance (DNS) or Mitigated Determination of Non-Significance (MDSN). It depends on what is in the application and what comments they receive.

Chris noted that EFSEC has already issued a Determination of Significance (DS) for the ZRE project. Dave had not received this document, and it was suggested that his name be added to EFSEC's distribution list for the project. Dave said that it was possible the County could issue a DNS or MDNS even if EFSEC issued a DS for the same project.

The issue of SEPA process and review came up again. Dave said he felt the only way for the County to find the project consistent was through their process and that requires SEPA review. He said that the County could not delegate its substantive SEPA authority to EFSEC.

Chris pointed out RCW 80.50.180, which appears to offer a blanket exemption from SEPA for local governments and state agencies making decisions that are part of an EFSEC site certification review. Jim and Dave said they were not familiar with that statute but would review it. They raised a concern that this statute is from 1977, which predates the GMA, and perhaps the SEPA requirements under GMA supercede RCW 80.50.180. Chris suggested it would be good to get input from EFSEC on this point. Jim suggested that if the County knew EFSEC would be doing a full SEPA review of the entire project, that perhaps the County could limit the scope of its SEPA review to the land use issues like aesthetics. For instance, if all the public comments they receive are regarding aesthetics and birds, then the County could focus on those issues, etc.

Regarding potential timeline for County review of an application for rezone/comp plan amendment/development agreement, Dave said the length of time depends to some degree on whether the County issues a DS or DNS/MDNS. If it is the latter, the timeframe would be a 30 day comment period followed by a 15 day appeal period. On the other hand, if it is agreed that an EIS is necessary or desirable, then the County could run scoping and public comment periods concurrently. He suggested an EIS doesn't have to be enormously long to be sufficient. Dave said typical re-zone applications are processed in 60 days, but that since this was a more complex proposal, he felt 6 months was probably the longest it would take the County to decide on a rezone request for the project. He said it was realistic to assume the County could have a land use decision by July '03 for the EFSEC consistency hearing if ZRE submitted an application to the County right away.

Jim Hurson emphasized that the County feels it can not move forward on any of this until ZRE submits an application for re-zone to the County. He asked why ZRE had not submitted an application to the County yet. Chris responded that ZRE wants to have clarity regarding the process for reviewing any application before it is submitted. Specifically, ZRE wants to know how long it will take to process the application, what

the steps involved will be, what the approximate costs will be, as well as concurrence from EFSEC that the proposed process is adequate and appropriate.

Jim said the County will be looking at the CUP permits issued by Walla Walla and Benton counties and meeting with county staff from those counties for the wind farms located in those counties to learn from their experiences.

Jim stressed that the major concern for the County is that the Board of County Commissioners (BOCC), as the highest elected officials of the County, want to make the decision regarding local land use. He said that is why the County changed its policy and process for wind farm review and permitting, so that the BOCC makes the land use decision re. wind farms, rather than appointed members of the Board of Adjustment, (as would be the case with a CUP application.) He said it was an issue of "the buck stopping here" with regard to accountability for the land use decision. He said the issue of what the appropriate mitigations should be for the project were more like details relative to the more fundamental decision as to whether a wind farm is an appropriate land use in the proposed location.

Finally, Chris asked if there were other possible solutions to the consistency issue. The County did not have any suggestions on this point. Chris pointed to the text amendment adopted by Walla Walla County for the Wallula Project that went through EFSEC recently. Jim was aware that something like this had been adopted and Chris provided Jim with a copy of the proposal for a text amendment submitted by the developer, the ordinance, and the text amendment itself.

Chris thanked the County representatives for meeting with him and that the meeting helped him better understand the County's concerns. He said he would like to talk to his legal counsel about the issues the County raised. Chris suggested a follow up meeting that includes EFSEC staff to ensure that all three parties concur on the approach to resolving the land use consistency issue. He offered to contact EFSEC and get back to the County to propose a meeting, hopefully within the next week.

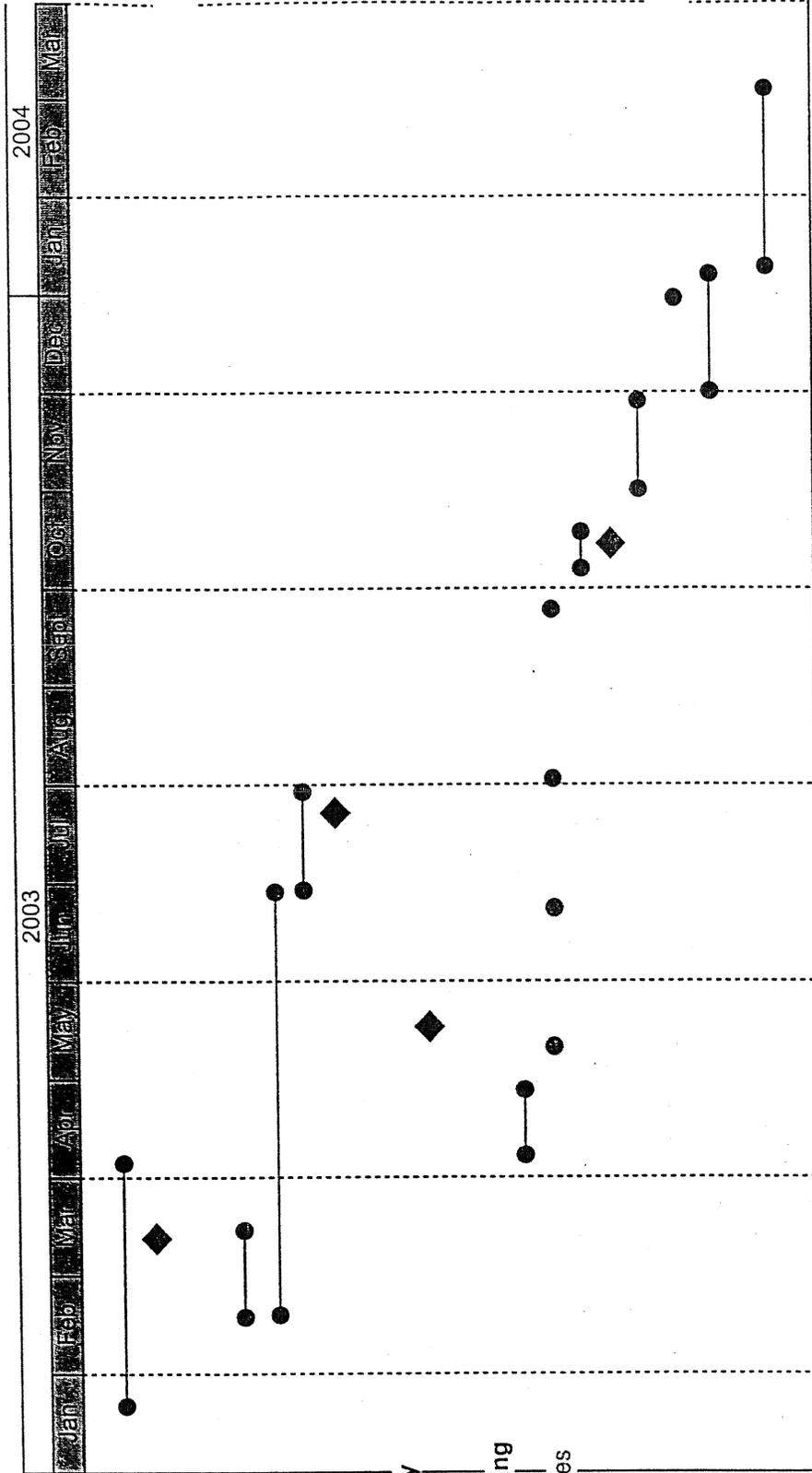
Clay White

From: James Hurson
Sent: Wednesday, March 12, 2003 9:58 PM
To: David Taylor; Clay White
Subject: Zilkha

Both Darrel Peeples and Chris Taylor told me at the meeting tonight they will be submitting their land use application for consistency within a week. I told Chris to call Clay if they had question about what's needed in the application. They said they are hoping to basically fill out our application form and attach the EFSEC application with references in our form to where the information is in the EFSEC application. I told Chris to call Clay since I hadn't really read the application close enough to know whether that works or not.



Tentative Schedule: Kittitas Valley Wind Power Project



Clay White

From: Chris Taylor [ctaylor@zilkha.com]
Sent: Thursday, March 27, 2003 11:27 AM
To: Clay White
Cc: David Taylor; James Hurson
Subject: RE: Zilkha Application

Thank you. Enjoy the training in DC.

Chris Taylor
Project Development Manager
Zilkha Renewable Energy

210 SW Morrison Street, #310
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222 E. 4th St.
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Fax: (509) 962-1123

Mobile: (509) 899-4609

-----Original Message-----

From: Clay White [mailto:ClayW@co.kittitas.wa.us]
Sent: Thursday, March 27, 2003 11:24 AM
To: Chris Taylor
Cc: David Taylor; James Hurson
Subject: Zilkha Application

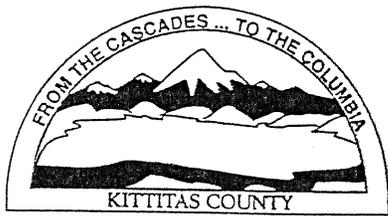
Chris-

This is to let you know that I did receive 2 copies of your application this morning. As you know from our conversation on March 18th and subsequent conversation on March 26th 2003, David Taylor and myself will be out of the office next week.

I will review your preliminary application as soon as possible and will let you know how we are proceeding at that point based upon what you have submitted.

Sincerely,

Clay White
Planner II
Kittitas County Community Development Services
(509) 962-7506



Community Development Services

411 N. Ruby, Suite 2, Ellensburg, WA 98926

Telephone: (509) 962-7506 ■ Facsimile: (509) 962-7697

April 15th, 2003

Zilkha Renewable Energy
Attn: Chris Taylor
222 East 4th, Suite 2
Ellensburg, WA 98926

RE: Draft Activities Application

Dear Mr. Chris Taylor:

Thank you for submitting your draft application to Kittitas County for the Kittitas Valley Wind Power Project. I am pleased to provide you comments based upon the submitted materials. As you knew prior to submitting your draft application on March 27, 2003, I was out of the office from March 28th – April 6th, 2003 for FEMA training in Emmitsburg, MD. With this being the case I am glad this office could expedite the review of your draft application on such short notice.

At our meeting on February 25th, 2003, Kittitas County made it clear on the options Zilkha has to become consistent with local land use. After reading just the cover of your draft application there were statements made in sharp contrast to our meeting discussions. In your cover letter there were three statements inconsistent with our prior conversations.

1) *“The re-zone and comprehensive plan sub-area amendment are requested to determine if the proposed land use is consistent with local land use regulations”*

The rezone and comprehensive plan amendment are not set up to be hearings to determine if your project is consistent with local zoning and land use. As you already know, the lands for which you are proposing your project are not consistent with either. The permits you seek are overlays of the existing zoning and land use, which together with a development permit/development agreement allow you to construct your project.

Your cover letter goes on to say that;

2) *“We are not seeking a development permit or development agreement to construct and operate the Project from Kittitas County, thus this request does not include a request for a development agreement and development permit”.*

As it is clearly stated in KCC 17.61A.040(B), a development permit/development agreement in conjunction with the rezone and comprehensive plan are necessary. This was relayed to you in our February 25th, 2003 meeting so I was surprised to read this in your application. KCC 17.61A is our Wind Farm Resource Overlay Zone chapter of our zoning code. I have attached it to this letter for your reference.

3) *“EFSEC has accepted the SEPA “lead agency” role pursuant to RCW43.21C.030 and has issued a determination of significance (DS) and has begun the process of drafting a Environmental Impact Statement (EIS). Therefore, detailed information will be available in the EFSEC EIS. Kittitas County is exempt from preparing a “detailed statement” (SEPA EIS) required by RCW 43.21C.030 pursuant to RCW 80.50.180”.*

As stated in our February 25th, 2003 meeting we would certainly consider this option but your application would have to explicitly tie this application to the EFSEC process. Therefore your application would have to stipulate that if you gained approval by Kittitas County and EFSEC denied your project, the zoning and land use changes would not be valid.

If you do not wish to tie this submittal to EFSEC then we will have to complete the SEPA process to fulfill our statutory obligations for rendering a decision on rezones, land use changes, and development agreements.

As has been the case since you first applied to EFSEC, you still have two options to gain consistency with Kittitas County.

1) Apply to Kittitas County for:

- Development permit/Development agreement
- Rezone
- Comprehensive Plan change

If you choose this option, you will have to tie your project directly to the EFSEC process. This is the only way you can be exempt from Kittitas County completing SEPA on your project. Here is what you will submit under this process:

- Kittitas County Community Development Services Development Activities Application
 - This includes the requirements on page 1, information on page 2, and the completion of Section III of the application.
- Site Plans correlating to the tax parcel numbers you would like included within the Land Use and Zoning Overlays.

We will also need sufficient copies of Volume 1 and 2 of your application submitted to EFSEC on January 13th, 2003 to distribute to adjoining property owners within 300' feet of the project boundaries, jurisdictional agencies, and interested parties. It should be noted, Kittitas County Code Title 15A provides if the property on which a project is proposed is adjacent to property under the same ownership, the 300' foot notice requirements are measured from the boundary of the adjacent lot.

2) You also have the option of not tying your project to EFSEC and completing the SEPA process through Kittitas County along with your Development permit/Development agreement, Rezone, and Comprehensive Plan change. Although you indicated on February 25th, 2003 that this is not the option you would like to pursue, your draft application did not indicate pursuing either option 1 or 2.

I hope this information is useful to you when considering your options. Both options are cut and dry and I hope that between our last meeting and this letter, you can get a complete application to us in a timely manner. Since our first meeting on March 14th, 2002 Kittitas County has met with you on short notice and reviewed submitted information without delay. I hope you can get us the needed information so that we can begin the application process.

Sincerely,



Clay White
Planner II
Kittitas County Community Development Services
(509) 962-7506