

1 As detailed in this and other sections, and as documented at the end of this section, the
2 Applicant has been committed to making a good faith effort to respond to County
3 inquiries and to resolve perceived noncompliance issues. Drawing on the project's DEIS
4 and its related documents, supplemental testimony and reports from expert witnesses, and
5 other materials cited at the end of this section, the Applicant has demonstrated the
6 project's compliance with the Kittitas County comprehensive plan and zoning while
7 pursuing a local permit through the County's unique land use process for windpower
8 projects.

9
10 Further reflecting the Applicant's good faith efforts to resolve perceived noncompliance
11 issues and be responsive to comments from the County and the public, the company took
12 the initiative to completely redesign the site from the originally proposed layout, reducing
13 the number of wind turbine generators from approximately 121 to 65 and resulting in a
14 electrical power generation capacity loss of approximately 60 MW. As analyzed by the
15 EFSEC DEIS Addendum, this action by the Applicant further minimized and mitigated
16 visual impacts. The Applicant's initial proposal included minimum 1000-foot setbacks
17 from existing residences of non-participating property owners.

18
19 In response to comments made during the County's public hearing process, the Applicant
20 prepared additional analyses and proposed a further redesign of the project which
21 guaranteed quarter-mile setback buffers from the small number of adjacent landowners
22 not having leases with the Applicant. That redesign allows additional visual impact
23 minimization and mitigation while preserving a not-to-exceed 65-turbine layout.

24
25 The County's position, as stated in their Findings of Fact and Conclusions of Law
26 (Resolution #2006-90), requires turbine setbacks of 2,000 feet from non-participating

1 property lines and 2,500 feet from non-participating residences. If these setbacks are
2 applied to this Project, it will result in further significant reduction in the number of
3 turbines rendering the project unviable for the Applicant's commercial purposes. The
4 sole basis given by the BOCC for these setbacks was the alleged potentially significant
5 adverse impacts related to shadow flicker and close proximity visual impact to
6 residences. In its deliberations, the BOCC rejected the significance of all other impacts
7 from the project, including but not limited to "landscape" visual impacts (from a distance
8 of greater than the required setbacks), wildlife and habitat impacts, alleged safety
9 concerns, and affects on property values.

10
11 The Applicant disputes those portions of the County's Findings of Fact related to County
12 Resolution 2006-90 which suggest the Applicant was unwilling to discuss project
13 revisions. The Applicant, during the public hearings and in written communication with
14 the County cited at the end of this section, also proposed technical means for resolving
15 the shadow flicker issues after construction and operation if it is established that an actual
16 significant impact exists and expressed the company's willingness to address road
17 restoration and other project-related topics raised in the record. It was only the County's
18 requirement that 2,000 and 2,500 foot setbacks be imposed - after the Applicant had
19 dramatically reduced the number of turbines, proposed quarter-mile setbacks, and
20 identified technical solutions to the shadow flicker issue - that did not lend itself to
21 further negotiation.

1
2 **Exhibits from the County Record**
3 **(Attached)**

- 4
5 1. County Resolution #2006-90 (6/06/06)
6 2. Planning Commission Findings of Fact and Conclusion of Law (2/13/06)
7 3. Horizon/Kittitas County - correspondence related to Horizon's proposals for
8 continued negotiations
9 4. Applicant's Proposed Findings of Fact and Conclusion, and Supporting
10 Documents and Exhibits (12/30/05)
11 a. Section 1 – Executive Summary
12 b. Section 2 – Consistency with Comprehensive Plan Policies
13 c. Section 3 – Compliance with Zoning Code Provisions
14 d. Section 4 – Compliance with Development Agreement Ordinance
15 e. Section 5 – SEPA Review
16 f. Exhibits 1 – 17 - Project Description, Maps, Expert Testimony and
17 Reports
18 g. Exhibit 18 – Amendment to DEIS
19 h. Exhibit 19 – Development Activities Application (10/14/05)
20 i. Exhibit 20 – Initial Preliminary Draft Proposed Development Agreement
21 5. Second Proposed Development Agreement (5/01/06)
22 6. County Hearings Transcripts
23 7. Horizon/Kittitas County - Miscellaneous Correspondence

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County Process Chronology

Date	County Action	Horizon Action	Description
12/3/02	X		Adoption of Wind Farm Ordinance 2002-19
12/19/02	X		Amended Wind Farm Ordinance 2002-23
1/13/03		X	Submitted request for ASC with EFSEC
5/1/03			EFSEC hearing-not consistent with land use ordinances
5/7/03			EFSEC entered its order from May 1
2/9/04		X	Filed preemption request with EFSEC
9/30/05		X	KV Application submitted
10/13/05	X		County issued incomplete application
10/14/05		X	Notice to withdraw preemption request, revised application
10/17/05		X	Revised KV Application accepted
10/19/05		X	Withdrew request for preemption
10/27/05	X		Notice of Application
11/14/05	X		Letter requesting clarification
11/23/05		X	Submitted clarification information
12/2/05		X	Submitted revised Application
12/23/05		X	EFSEC submitted Addendum to DEIS
12/23/05		X	Submitted draft Development Agreement
1/10/06	X		Planning Commission and BOCC Public Hearing
1/11/06	X		Continued Public Hearing
1/12/06	X		Continued Public Hearing
1/30/06	X		Planning Commission deliberations
2/7/06	X		BOCC agenda - status of deliberations
2/13/06	X		Planning Commissioner Findings of Fact
2/21/06	X		BOCC agenda - set continued public hearing dates
3/15/06		X	Submitted response to Planning Commission matrix
3/29/06	X		Continued Public Hearing
3/30/06	X		Continued Public Hearing
4/12/06	X		BOCC deliberations
Apr-06	X		Board site visits to Dayton
4/25/06		X	Submitted response to BOCC requests
4/27/06	X		Continued deliberations
5/1/06		X	Submitted revised Development Agreement
5/3/06	X		Continued deliberations

5/15/06		X	Submitted letter to BOCC response from EFSEC meeting
5/16/06	X		BOCC agenda - Administrative Matters (letter of 5/15)
5/17/06	X	X	Staff level meeting on further negotiations
5/19/06		X	Submitted letter to CDS for clarification on setbacks
5/22/06	X		CDS response to clarification letter
5/23/06		X	Submitted letter to BOCC on status of negotiations
5/31/06	X		Continued deliberations
6/6/06	X		BOCC signed Resolution to deny project

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Statutory Framework

EFSEC has the authority to preempt county land use ordinances and permits. RCW 80.50.010 provides as follows:

RCW 80.50.110 Chapter governs and supersedes other law or regulations--
Preemption of regulation and certification by state. (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

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

RCW 80.50.120 (3) further states:

Effect of certification. (1) Subject to the conditions set forth therein any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of

1 the council or not, as to the approval of the site and the construction and operation
2 of the proposed energy facility.

3 (2) The certification shall authorize the person named therein to construct and
4 operate the proposed energy facility subject only to the conditions set forth in
5 such certification.

6 (3) The issuance of a certification shall be in lieu of any permit, certificate or
7 similar document required by any department, agency, division, bureau,
8 commission, board, or political subdivision of this state, whether a member of the
9 council or not.

10 The legislature amended RCW 80.50 during the last energy crisis pursuant to Sec 1,
11 chapter 214, Laws of 2001, showing its concern regarding impediments to providing
12 adequate energy resources to the state and region. The legislature again stressed the
13 importance of the state's interest regarding energy facilities and its authority to preempt
14 local land use ordinances to provide for that interest by its adoption of RCW
15 80.50.010(5), which added the following statement of intent and purpose for EFSEC:

16 (5) To avoid costly duplication in the siting process and ensure that decisions
17 are made timely and without unnecessary delay.

18
19 The State of Washington, for the reason stated in RCW 80.50.010, has preempted the
20 siting of the energy facility subject to this proceeding, including the land use ordinances
21 and permits that would have otherwise been required by Kittitas County.

22
23 In 1978 EFSEC adopted regulations regarding the preemption of local land use plans and
24 zoning. These regulations provide pursuant to WAC 463-28-030 that in the event a site
25 of a proposed energy facility is found not to be consistent and in compliance with
26 existing land use plans and zoning ordinances the Applicant is required to make

1 application to the local jurisdiction for zoning and land use changes and make all
2 reasonable efforts to resolve the noncompliance. WAC 463-28-040 provides that the
3 Applicant must file a written request for preemption of the local land use regulations, if
4 after the land use hearing held pursuant to RCW 80.50.090, EFSEC determines
5 noncompliance. WAC 463-28-040 further provides that the preemption request must
6 address the following: (1) That the applicant has demonstrated a good faith effort to
7 resolve the noncompliance issues, (2) That the applicant and the local authorities are
8 unable to reach an agreement which will resolve the issues, (3) That alternate locations
9 which are within the same county and city have been reviewed and have been found
10 unacceptable, and (4) Interests of the state as delineated in RCW 80.50.010.

11 12 **Kittitas County Ordinance and Wind Energy Facility Permitting Process**

13 On August 7, 2001, the Kittitas County Board of County Commissioners (BOCC)
14 unanimously adopted Ordinance 2001-12, an amendment to Chapter 17.61 of the Kittitas
15 County Code (KCC) allowing Major Alternative Energy Facilities (including wind farms)
16 as a conditional use in the Agriculture-20, Forest and Range, Commercial Ag and
17 Commercial Forest zoning designations. The Kittitas County Board of Adjustment was
18 given the authority to authorize a conditional use permit for such a project. This was
19 adopted without controversy or opposition.

20
21 On December 3, 2002, the Kittitas County BOCC changed the zoning ordinance, adopting KCC
22 Chapter 17.61A pertaining to wind farm development to shift responsibility for reviewing and
23 permitting wind farms from the Board of Adjustment to the BOCC. KCC Chapter 17.61A was
24 patterned after the process Kittitas County used to site and permit the Mountain Star (now called
25 “Suncadia”) master planned resort. This process requires four separate elements: 1) A
26 development agreement, 2) A site-specific rezone to Wind Resource Overlay Zone, 3) A sub-area
27 comprehensive plan amendment, and 4) A development permit. It did not provide for a zoning

1 designation for wind farms in areas of the County in which they could be built, but instead set up a
2 siting/permitting process which potentially allowed one to be built anywhere in the county within
3 Ag. 20, Forest and Range, Commercial Ag and Commercial Forest zones. Proposed permit
4 conditions were to be addressed on a project-by-project basis with site-specific evaluations.

5
6 In accordance with KCC 17.61A the entire County is inconsistent for a wind farm use
7 because wind farms are not designated as a permitted use in any of the County's zoning
8 classifications. The County chose not to adopt a traditional zoning process that would
9 designate areas in which a wind farm could be permitted, but instead adopted a
10 siting/permitting process to evaluate proposals on a case-by-case basis. This process
11 inextricably combines legislative comprehensive planning and zoning functions with the
12 requirement for "negotiation" of a development permit, and the issuance of a quasi-
13 judicial development permit. For the Kittitas Valley Wind Power Project process, the
14 BOCC required the development agreement negotiations occur in a public hearing
15 setting.

16
17 In essence, the BOCC decided to not zone, but rather to apply an unusual
18 siting/permitting process that theoretically allows wind farms anywhere in the above-
19 referenced zoning designations. Anyone proposing to build a wind farm would be
20 required to apply for a Wind Farm Resource Overlay Zoning District (through a rezone
21 and a comprehensive plan "subarea plan" amendment) for the specific parcels where it
22 plans to build. Pursuant to the ordinance, a wind farm may be authorized by the BOCC
23 only through approval of a Wind Farm Resource Development Permit in conjunction
24 with approval of a development agreement. These four blended legislative and quasi-
25 judicial processes and approvals must run concurrently, and cannot be uncoupled.
26 Additionally, it appears from the process that the County also requires that the application
27 be evaluated under the County's rezone ordinance, KCC Chapter 17.98.

1
2 The development agreement may be conditioned upon development standards such as
3 densities, number, size, setbacks, location of turbines and mitigation measures and other
4 development conditions to protect the surrounding area. The BOCC would concurrently:
5 1) adopt a site-specific amendment to the Comprehensive Plan land use designation map
6 to Wind Farm Resource Overlay District; 2) adopt a site specific rezone of the county
7 zoning map to Wind Farm Resource Overlay Zoning District; 3) issue a Wind Farm
8 Development Permit; and (4) negotiate and approve a development agreement. These
9 approvals can be made only if the BOCC determines that 1) the proposal is essential or
10 desirable to the public convenience; 2) the proposal is not detrimental or injurious to the
11 public health, peace, or safety or to the character of the surrounding neighborhood; and 3)
12 the proposed use at the proposed location(s) will not be unreasonably detrimental to the
13 economic welfare of the County and it will not create excessive public cost for facilities
14 and service.
15

16 **Applicant's Good Faith Efforts to Resolve Inconsistency**

17 The Applicant filed an Application for Site Certification ("ASC") with EFSEC on
18 January 13, 2003. The original application proposed 121 turbines in a project area
19 depicted on ASC Exhibit 1, Project Site Layout. As is described in the Addendum to the
20 DEIS, the Applicant revised the project in order to minimize visual impacts and to seek
21 consistency with County land use plans and zoning ordinances. As described in the
22 Applicant's revisions to the ASC and the DEIS Addendum, the redesigned project
23 proposes up to 80 turbines within the 6,000 acre project area. During the County hearing
24 process, the Applicant agreed to further reduce the number of turbines to a maximum of
25 65.
26

1 EFSEC held a Land Use Consistency Hearing on May 1, 2003 in Ellensburg. It found
2 that the land use was not consistent with local land use ordinances and entered its order
3 on May 7, 2003.

4
5 Recognizing the EFSEC requirement that the Applicant make the necessary application
6 for change in, or permission under, such land use plans or zoning ordinances, and make
7 all reasonable efforts to resolve noncompliance, the Applicant filed its first County
8 application pursuant to KCC 17.61A, on March 27, 2003 (“first application”). The
9 Applicant then commenced protracted efforts to seek a County hearing. Among many
10 problems with the County, the Applicant faced significant challenges with the County’s
11 legal position regarding EFSEC’s role as the SEPA lead agency, in particular the
12 County’s efforts to subvert and preempt EFSEC’s statutory SEPA lead agency role.

13
14 The Applicant filed a request for preemption with EFSEC pursuant to
15 WAC 463-28-040 on February 9, 2004 and, withdrew the first County application. The
16 Applicant continued to work with the County on the issue. In the summer of 2005 the
17 Applicant decided to revise the project size and configuration and to file a new
18 application with the County, in hope of obtaining land use consistency. The Applicant
19 approached both the County and EFSEC on this matter and it was agreed to suspend the
20 EFSEC process pending the new application with the County. Both the County and
21 EFSEC requested the Applicant to withdraw its request for preemption pending the
22 outcome of the new County application. The Applicant withdrew its request for
23 preemption on October 19, 2005.

24
25 The Applicant made a second attempt to achieve local land use consistency, and filed a
26 Development Activities Application pursuant to KCC 17.61A with the County dated
27 September 30, 2005 and submitted a revised Development Activities Application on

1 County-required application forms, dated October 14, 2005. The County deemed the
2 application complete on October 17, 2005.

3
4 Under the County's process, the County purported to hold a single public hearing before
5 both the Planning Commission and the BOCC, commencing on January 10, 2006, and
6 continued in a serial fashion through numerous public meetings, ending on June 6, 2006.

7 The Applicant submitted proposed findings of fact and conclusions of law, demonstrating
8 that the Project is consistent with applicable County comprehensive plan policies and
9 meets criteria for approval under applicable County zoning ordinances. The Applicant
10 presented written and live testimony from expert witnesses regarding visual impacts,
11 shadow flicker effects, property values, health and safety, noise and wildlife impacts.

12 The Applicant submitted a preliminary draft proposed development agreement, modeled
13 on the County-approved Wild Horse wind energy facility development agreement,
14 anticipating negotiation and discussion of the development agreement with County staff,
15 aimed at refining the agreement during the approval process.

16
17 Following hearings on January 10, January 11 and January 12, 2006, the Planning
18 Commission held a deliberation on January 30, 2006 and issued a recommendation and
19 findings of fact on February 13, 2006, recommending denial of the application. The
20 BOCC commenced "continued" hearings on March 29 and 30, 2006 with additional
21 deliberations on April 12 and 27. On May 3, 2006, the BOCC issued a verbal decision
22 "preliminarily" denying the application. The denial was fundamentally based on the
23 BOCC's determination that the project, as proposed, would cause unacceptable visual
24 and shadow flicker impacts on residents residing in the vicinity of the project. While the
25 BOCC preliminarily denied the project due to the proximity of turbines to non-
26 participating landowners, each County Commissioner offered varying opinions about the
27 needed setbacks. At this stage, the BOCC did not take formal action by way of a motion

1 or otherwise to define this essential project characteristic. Following the BOCC's
2 preliminary decision to deny the project, the Applicant met with the County staff in an
3 effort to determine whether it was possible to change the project further in order to
4 accommodate the various setback requirements identified in the verbal deliberations by
5 the BOCC. Letters were exchanged between the Applicant and the County regarding
6 these ongoing efforts to satisfy the BOCC's requests. (*See Exhibit 3*, attached hereto).

7
8 On May 31, 2006, the Kittitas County Board of County Commissioners reviewed draft
9 findings of fact and conclusions of law denying the project. The BOCC formally
10 identified minimum setbacks from existing non-participating residences (2500 feet) and
11 non-participating owners' property lines (2000 feet) that would be required to consider a
12 favorable County decision. The Applicant advised the County that these setbacks would
13 render the project unviable. On June 6, 2006, by Resolution No. 2006-90 the BOCC
14 denied the project.

15
16 The Applicant has made all reasonable efforts to resolve "noncompliance" issues with the
17 County as required by WAC 463-28-030. In summary, the Applicant made two efforts to
18 seek local consistency, reduced the project in half to minimize impacts, deployed
19 substantial expert witness resources to the County process, and participated in protracted
20 hearings. The Applicant's efforts were made, despite a County process that is uniquely
21 complex and discretionary, duplicates the EFSEC role and process, and does not meet
22 EFSEC standards for the expeditious siting of energy facilities.

23 24 **Alternative Locations in Kittitas County**

25 The zoning ordinance for Kittitas County, KCC Chapter 17.61A does not allow wind farms as a
26 permitted or conditional use anywhere in the County. The County chose, after considerable debate
27 on the issue, to not go through a zoning process that would designate areas in which a wind farm

1 would be permitted by way of a conditional use permit or other typical permitting processes. The
2 BOCC instead adopted a project-specific siting/permitting process to consider proposed wind
3 power projects on a case-by-case. This wind farm siting process is more complex and contains
4 more regulatory hurdles than are required for siting a fossil-fuel fired power plant, pipelines, or any
5 other type of energy-related facility in the County, without policy rationale for treating renewable
6 energy more strictly than conventional greenhouse gas-producing energy facilities. The Applicant
7 pointed this out to the County in comments submitted to the BOCC regarding the proposed Wind
8 Farm Ordinance in December 2002. Pursuant to the ordinance, a wind farm may be authorized by
9 the BOCC only through approval of a Wind Farm Resource Development Permit in conjunction
10 with approval of a development agreement. In effect, under the County's ordinance, there are no
11 alternative areas of the County that are "zoned" for wind energy facilities. There is no site or
12 area in the County that an Applicant can identify that allows a wind farm as a permitted
13 or conditional use. In other words, without going through the entire County
14 siting/permitting process for each individual proposed site, there is no zoning district or
15 area where a wind farm can be sited. In essence, an Applicant is unable to find any place
16 in the County in which a wind farm is permitted without submitting multiple applications
17 through the County siting/permitting process – a process that vests the BOCC with
18 unfettered discretion and provides no meaningful criteria for an applicant to utilize in
19 judging specific sites or the economic viability of a project undergoing review under the
20 County's process.

21
22 The EFSEC "alternative locations" standard in WAC 463-28-040 relates to the
23 availability of other, appropriately zoned locations. The SEPA alternatives analysis
24 standard applies different criteria for a very different purpose not required under WAC
25 463-28-040, Under the SEPA standard, an analysis of alternative sites in the County for
26 the Kittitas Valley Wind Power Project was included in the in Chapter 2.7 of EFSEC
27 DEIS, the EFSEC Supplemental DEIS, Chapter 2.4.1 of the Kittitas County DEIS for the

1 enXco Desert Claim Wind Power Project and Chapter 3.16 of the Wild Horse Wind
2 Power Project DEIS, which are referred hereto by reference.

3
4 The analysis in the EFSEC DEIS was the same used by Kittitas County for its DEIS for
5 the enXco Desert Claim wind farm site and the Wild Horse DEIS. The County denied
6 the enXco Desert Claim project, while approving the Wild Horse project. These DEIS's
7 established criteria for the analysis of alternatives, and then reviewed potential sites in
8 Kittitas County. In summary, the criteria are as follows: 1) sufficient wind resource (the
9 most important); 2) proximate/adequate transmission facilities; 3) large land area; 4)
10 absence of significant environmental constraints; and 5) property owner interest/property
11 availability/control of property. The DEIS's concluded that although other sites for wind
12 power generation may exist in Kittitas County, none would satisfy the test for availability
13 or practicability for the KVVPP proposal.

14 15 **Interests of The State**

16 Preemption of the Kittitas County land use ordinances will further the interests of the
17 State of Washington. Several overriding state concerns are involved. Most of the
18 overriding state concerns are referenced in RCW 80.50.010. They include the provision
19 of abundant energy at reasonable cost, with minimal adverse effects on the
20 environment—a combination of policies that is leading the state to favor “green” energy
21 sources such as wind power. It is important to note that the above policies are statewide
22 policies that cannot necessarily be addressed solely by reference to “the best interests of
23 the surrounding neighborhood or the county as a whole” (Kittitas County Code
24 17.61A.040A)

25
26 The interests of the State to be considered and balanced, which are delineated in RCW
27 80.50.010, will be met by preemption. RCW 80.50.010 provides:

1 Legislative finding--Policy--Intent.

2 The legislature finds that the present and predicted growth in energy demands in
3 the state of Washington requires the development of a procedure for the selection
4 and utilization of sites for energy facilities and the identification of a state
5 position with respect to each proposed site. The legislature recognizes that the
6 selection of sites will have a significant impact upon the welfare of the
7 population, the location and growth of industry and the use of the natural
8 resources of the state.

9 It is the policy of the state of Washington to recognize the pressing need for
10 increased energy facilities, and to ensure through available and reasonable
11 methods, that the location and operation of such facilities will produce minimal
12 adverse effects on the environment, ecology of the land and its wildlife, and the
13 ecology of state waters and their aquatic life.

14 It is the intent to seek courses of action that will balance the increasing demands
15 for energy facility location and operation in conjunction with the broad interests
16 of the public. Such action will be based on these premises:

17 (1) To assure Washington state citizens that, where applicable, operational
18 safeguards are at least as stringent as the criteria established by the federal
19 government and are technically sufficient for their welfare and protection.

20 (2) To preserve and protect the quality of the environment; to enhance the
21 public's opportunity to enjoy the esthetic and recreational benefits of the air,
22 water and land resources; to promote air cleanliness; and to pursue beneficial
23 changes in the environment.

24 (3) To provide abundant energy at reasonable cost.

25 (4) To avoid costs of complete site restoration and demolition of improvements
26 and infrastructure at unfinished nuclear energy sites, and to use unfinished
27 nuclear energy facilities for public uses, including economic development,

1 under the regulatory and management control of local governments and port
2 districts.

3 (5) To avoid costly duplication in the siting process and ensure that decisions
4 are made timely and without unnecessary delay

5
6 **The Kittitas Valley Wind Power Project Will Help Meet Future Regional Demand**
7 **for Abundant Energy at Reasonable Cost**

8 Sections 1.2 and 3.5 of the EFSEC Kittitas Valley Wind Power Project DEIS, which are
9 incorporated herein as if fully set out, describe the purpose and need for the Kittitas
10 Valley Wind Power Project and electrical energy demand in the region. In part Section
11 1.2 states:

12
13 *“The purpose of the KVVPP is to construct and operate a new electrical*
14 *generation resource using wind energy that will meet a portion of the projected*
15 *growing regional demands for electricity produced from non-renewable and*
16 *renewable resources. In the Pacific Northwest Electric Power Planning and*
17 *Conservation Act, Congress established that development of renewable resources*
18 *should be encouraged in the Pacific Northwest (16 United States Code [USC]*
19 *Section 839[1][B]). The Act defines wind power as a renewable resource (Section*
20 *839a[16]).*

21
22 *Recent national and regional forecasts predict increasing consumption of*
23 *electrical energy will continue into the foreseeable future, requiring development*
24 *of new generation resources to satisfy the increasing demand. The demand and*
25 *need for power is covered in detail in Chapter 1.2 and Chapter 3.5.1 of the*
26 *EFSEC Kittitas Valley Wind Power Project DEIS, which are incorporated by*
27 *reference herein as if fully set out.*

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The Western Electricity Coordinating Council (WECC) forecasts electricity demand in the western United States. According to WECC's most recent coordination plan, the 2001-2011 summer peak demand requirement is predicted to increase at a compound rate of 2.5% per year (WECC 2002).

Based on data published by the Northwest Power and Conservation Council (NWPPCC), electricity demand for the NWPPCC's four-state Pacific Northwest planning region (Washington, Oregon, Idaho, and Montana) was 20,080 average MW in 2000 (NWPPCC 2003).

... (T)he NWPPCC's recently revised 20-year demand forecast projects that electricity demand in the region will grow from 20,080 average MW in 2000 to 25,423 average MW by 2025 (medium forecast), an average annual growth rate of just less than 1% per year. While the NWPPCC's forecast indicates that the most likely range of demand growth (between the medium-low and medium-high forecasts) is between 0.4 and 1.50% per year, the low to high forecast range used by the NWPPCC recognizes that growth as low as -0.5% per year or as high as 2.4% per year is possible, although relatively unlikely (NWPPCC 2003)."

DEIS Section 2.1 points out that there is a growing market for electricity powered by "green resources" in the Pacific Northwest. As a result of RCW 19.29A signed into law in 2001, sixteen of Washington's electric utilities were directed to offer a voluntary alternative energy product (essentially an electricity product powered by green resources) starting in January 2002. Local and regional markets for green power have been increasing. Several regional electric utilities have recently issued requests for proposals (RFPs) to acquire wind power, including Puget Sound Energy, Pacific Power, Avista

1 Corporation, and Portland General Electric. This trend will accelerate if the proposed
2 ballot initiative, I-937, passes in November 2006, and implements requirements for all
3 the state's electric utilities to increase their use of renewable energy by 15% by 2020.

4
5 The energy crisis of 2001 and the volatility of the price of natural gas have also created
6 increased demand for wind power to meet the region's future power needs. Puget Sound
7 Energy's 2005 Least Cost Plan has a section entitled "Gas Projects are Losing
8 Favor" which states: "Typically, natural gas-fired projects are easier to site and permit in
9 western Washington than other fossil-fueled plants, and due to the proximity to natural
10 gas pipelines and transmission to the major load centers, natural gas projects had been the
11 default choice in new generation. Today, with high natural gas prices, these projects are
12 becoming less economical to own. They typically operate on the margin, and require
13 sophisticated and expensive hedging strategies to manage fuel price risk and related
14 volatility."

15
16 Wind power offers utilities more predictability regarding their future energy costs,
17 because once a wind farm is constructed, there are no fuel costs and very little
18 maintenance costs. Wind power developers, unlike developers of natural gas plants,
19 routinely offer utility customers long-term (i.e. 20 years) fixed-price contracts.
20 Increasing customer demand for green energy, the environmental attributes of wind
21 power, and its fixed price have led the region's utilities to include significant percentages
22 of wind power in their latest integrated resource plans. PacifiCorp's 2004 Integrated
23 Resource Plan's "Planned Resources" section states: "PacifiCorp concludes that since
24 the Company is committed to continuing the pursuit of renewable generation as a viable
25 solution to meeting customer demand, it is reasonable and prudent to assume that 1,400
26 MW of renewable resources should be included as a Planned Resource." Avista's 2005
27 Electric Integrated Resource Plan reinforces that message in the following table:

Table 7.1: Northwest IOU Loads and Estimated Wind Acquisition Plans through 2016 (from Avista 2005 Integrated Resource Plan)

Utility	IRP Wind Capacity (MW)	2016 Load (aMW)	IRP Wind Energy (aMW)	Wind Contribution to Load (percent)
Avista	400	1,424	132	9.3
Idaho Power	350	2,187	116	5.3
PacifiCorp West	600	2,678	198	7.4
Portland General Electric	200	3,075	66	2.1
Puget Sound Energy	845	2,790	279	10.0
Total	2,395	12,154	790	6.5

Since filing this application in January 2003, energy prices have continued to rise, in part due to significant volatility of natural gas prices and supply. The risk to national security resulting from dependence on foreign supplies of natural gas and oil has become notorious. Nationally, regionally and in Washington State, there is a growing recognition of the need to develop a significant portfolio of renewable energy resources. The development of the limited number of suitable wind energy sites is now a priority at the state, regional and national levels.

As demand for wind energy has been increasing in the region, it needs to be noted that wind resources in the state of Washington are finite and limited. As stated in Section 3.5-6 of the EFSEC Kittitas Valley Wind Power Project DEIS; ...”Estimates of the wind resource ...are expressed in wind power classes ranging from Class 1 to Class 7, with

1 each class representing a range of mean wind power density or equivalent mean speed at
2 specified heights above the ground. Areas designated Class 4 or greater are suitable with
3 advanced wind turbine technology under development today.” It further states that the
4 state of Washington compared to other states, is “ranked in the bottom tier in terms of
5 wind energy potential.” This point is echoed Avista’s 2005 Integrated Resource Plan
6 Executive Summary: “The wind limitation reflects Company agreement with the
7 Northwest Power and Conservation Council (NPCC) that a limited amount of
8 economically viable wind potential exists in the Northwest.”
9

10 A recent study identified 1,900 aMW of wind energy potential in Washington looking
11 only at the windiest and most developable locations (Tellus Institute 2002). The
12 constrained availability of environmentally suitable locations with reasonable access to
13 the electrical transmission grid compounds the limitation of available sites for wind
14 energy facilities.
15

16 The EFSEC Kittitas Valley Wind Power Project DEIS also stated in Section 3.5 that the
17 Ellensburg corridor in Central Washington, where the KVVPP, the Wild Horse Project,
18 and the Desert Claim project are located and proposed, sustains one of the strongest wind
19 energy resources in the state. Data from several sites throughout the central Washington
20 corridor indicate that exposed areas have a Class 4 to 5 annual average wind resource
21 with a Class 6 resource during the spring and summer seasons. Wind resources of this
22 class near transmission lines and load centers (such as the Kittitas Valley Wind Power
23 Project site) are finite and are critical to meeting state and regional energy needs with
24 abundant energy at reasonable cost, a point that is particularly important when serving the
25 westside market for renewables is considered. Puget Sound Energy’s 2005 Least Cost
26 Plan’s “Wind is an Emerging Resource” section, states: “Wind projects are becoming
27 much more attractive due to the maturity of wind turbine technology, the adequacy of

1 wind resources in the Northwest, trends toward portfolio renewable standards (sic), and
2 current tax incentives....Transmission system constraints that hinder the ability of
3 projects to serve major load centers in the Puget Sound area, as discussed below, make
4 projects outside PSE's service territory less attractive.”

6 **Operational Safeguards**

7 There are no specific operational safeguards for wind energy power projects in the nature
8 of federal operational safeguards for nuclear power plants, as wind power projects are
9 inherently safer than thermal power projects. With a wind power project, there is no fuel
10 to transport, leak, explode or leach into the ground, and there are no discharges to the
11 environment to control. However, the general safeguards related to health and safety are
12 outlined and described in detail in Chapter 3.4 of the EFSEC Kittitas Valley Power
13 Project Draft EIS, and Sections 2.9, 4.1, and 7.2 of the Kittitas Valley Wind Power
14 Project Application for Site Certification, which are incorporated by reference herein as if
15 fully set out. These sections list the main laws, ordinances, regulations, and standards
16 designed to protect human health and safety that would be reflected in the design,
17 construction, and operation of the project, and describe existing health and safety hazards
18 at the project site and identify potential health and safety risks from project construction
19 and operation mitigation measures are identified for potential impacts. The operational
20 safeguards described are more than technically sufficient to protect the welfare of the
21 citizens of the State of Washington.

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Quality of the Environment

EFSEC is to consider preserving and protecting the quality of the environment in balance with the other items listed in 80.50.010. There has been exhaustive study and analysis regarding environmental impact and mitigation related to this Project. This analysis is set out in the Kittitas Valley Power Project Application for Site Certification and Chapters 1.8, 1.9, 1.10 and 3 of the EFSEC Kittitas Valley Wind Power Project DEIS, the EFSEC Supplemental DEIS and the EFSEC Addendum to the DEIS which are referred hereto and incorporated by reference as if fully set out. Potential environmental impacts from the proposed action and the No Action Alternative are described in Chapter 3 of this EIS, Supplemental DEIS and Addendum to the DEIS. Types of measures to avoid or reduce adverse environmental impacts resulting from the project presented in the DEIS include: (1) measures inherent in project design; (2) best management practices (BMPs) incorporated into construction and operation; and (3) mitigation measures either proposed by the Applicant or additional mitigation measures recommended in the DEIS. This environmental analysis addresses the direct, indirect, and cumulative impacts for the proposed action. The analysis concludes that the project will not produce significant impacts upon quality of the environment except for the highly subjective matter of visual impact. The potentially adverse effect of this visual impact is balanced by the public need for the facility, the positive benefits to the environment made possible by clean renewable energy generation, and the otherwise minimal environmental impacts associated with this form of energy production, especially when compared with alternative means of generation.

The Applicant will provide enhanced recreational opportunities by developing informational facilities for viewing and to explain the operation of the wind farm. Wind power does not require non-renewable fuels or the use of water that is required by other

1 forms of energy production, and does not discharge pollution into the air or waters of the
2 state. This form of energy by its very nature enhances the public's opportunity to enjoy
3 the recreational benefits of air and water. Further, the use of the land as a wind farm will
4 help retain the agricultural rural nature of the area, and avoid degradation caused by
5 Kittitas County's current pattern of sprawling rural residential subdivisions. The
6 Applicant also proposes to protect and restore wildlife habitat on over 600 acres located
7 within the project boundaries. The amount of habitat to be restored and protected in this
8 approximately 600 acre area significantly exceeds the amount of habitat mitigation
9 required under the Washington Department of Fish and Wildlife 2003 Wind Power Siting
10 Guidelines for the construction and operation Kittitas Valley Wind Power Project. Thus
11 the Applicant will create a net habitat enhancement.

12
13 **The Project Will Promote Air Cleanliness and Beneficial Changes in the**
14 **Environment**

15 Chapter 3.2 of the Kittitas Valley Wind Power Project Application for Site Certification
16 describes the Project's contribution to air cleanliness and beneficial changes to the
17 environment.

18
19 The fuel source for the Project is wind that is transformed from kinetic energy into
20 electrical energy by wind turbine generators. No air emissions will be generated from
21 operation of the wind turbine generators at the Project. The operation of the Project will
22 have no negative effect on the climate (visible plumes, fogging, misting, or impairment of
23 visibility, and changes in ambient levels caused by emitted pollutants from conventional
24 facilities). There are no emissions from the operation of the project, and thus none to be
25 regulated.

1 The vast majority of new power plants proposed and constructed in the Pacific Northwest
2 in recent years have been fossil fuel fired plants, primarily using natural gas. Given the
3 volatility of natural gas prices and supply, coal generated power is the likely alternative
4 to wind energy to meet Washington's growing energy needs. Fossil fuel fired plants, in
5 contrast to wind power projects, emit significant quantities of carbon dioxide, which has
6 been identified in numerous analyses as the primary cause of anthropogenic climate
7 change. Natural gas and coal fired plants also emit sulfur oxides and nitrogen oxides,
8 which contribute to both ground-level air quality problems and acid rain. By producing
9 electricity without generating air emissions, which would otherwise be produced by fossil
10 fuel fired plants, the Project will have a significant beneficial impact on overall air
11 quality and climate including reduction of emissions of green house gases.

12
13 The project will also allow the owners of the properties upon which the wind farm is
14 located to economically continue their present use, which is primarily agricultural (i.e.
15 grazing) in nature. This will assist those current owners in avoiding the environmental
16 degradation caused by the most likely alternative use of the area, sprawling residential
17 subdivision development, which conflicts with the area's current rural residential
18 development and traditional rural land uses and is, ostensibly, protected from happening
19 by the County in accordance with existing zoning code requirements and Comprehensive
20 Plan policies.

21 22 **Timeliness and Duplication**

23 Highly important to the State is a policy that governmental decisions regarding energy
24 facilities are made quickly, without costly duplication. This policy is contained in RCW
25 80.50.010(5), and in the requirement of RCW 80.50.100 that the Council submit its
26 recommendation to the governor within one year of receiving an application. RCW
27 80.50.010(5) was adopted by the Legislature in 2001 in the middle of a regional energy

1 crisis. This is an important pronouncement of the legislature's concerns and direction
2 regarding siting energy facilities. Policies to avoid duplication are also inherent in many
3 features of SEPA and the SEPA rules. These include requirements that there be a single
4 environmental impact statement, prepared by the lead agency, that appeals be limited,
5 and that appeals of intermediate SEPA compliance steps are prohibited. Energy facilities
6 are expensive, and must be licensed to meet changing market conditions and costs. State
7 policies therefore favor predictable, nonduplicative and relatively expeditious licensing
8 procedures.

9
10 Kittitas County has shown little or no interest in meeting these state policies. It has
11 created largely duplicative, time consuming, and highly complex licensing and SEPA
12 compliance processes that provide none of the predictability needed for planning
13 renewable energy facilities, while preserving traditional, more expeditious siting
14 procedures for thermal electrical generation facilities.

15
16 The Applicant recognizes that EFSEC will consider legitimate local concerns during its
17 adjudicative hearing on the Application for Site Certification. The State must allow a
18 process which provides abundant energy at reasonable cost through a timely, definite, and
19 non-duplicative licensing process. Kittitas County requirements, which fail to address, or
20 which unreasonably hamper these overriding state concerns, should be preempted.

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Conclusion

By the foregoing, the Applicant has addressed the requirements as set forth in WAC 463-28-040 and demonstrated that preemption should be granted. The Applicant believes that the adjudicative hearing on the preemption required by WAC 463-28-060 should occur in conjunction with the main adjudicative hearing. WAC 463-28-060 requires a consideration of the factors listed WAC 463-28-040, which may require a full consideration of all the policies of RCW 80.50.010 as they apply to this Application for Site Certification.

Dated this _____ day of June, 2006

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