

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF KITTITAS  
STATE OF WASHINGTON**

**RESOLUTION NO. 2006-90**

**A Resolution Denying the Kittitas Valley Wind Power Project Proposal Including Denial of Subarea Designation, Rezone Overlay, Development Agreement and Development Activities Permit**

WHEREAS, Kittitas County ("County") adopted its Comprehensive Plan pursuant to the Washington State Growth Management Act, Chapter 36.70A RCW ("GMA"), by Ordinance 96-10 on July 26, 1996; and

WHEREAS, the County amended KCC 17.61 Utility Ordinance and added KCC 17.61A regarding wind farm development by Ordinance 2002-19 on December 3, 2002. This ordinance provided for a concurrent and consolidated review process for wind farm applications to be heard by the Board of County Commissioners and allowed for the processing of comprehensive plan amendment related to wind farms through a sub-area designation; and

WHEREAS, the County amended its Comprehensive Plan by Ordinance 2002-23 on December 19, 2002 including GPO 6.34 which provides: "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."; and

WHEREAS, Sagebrush Power Partners LLC ("Applicant") submitted an application for the Kittitas Valley Wind Power Project on September 30, 2005 seeking approval of all Kittitas County development activity requirements including comprehensive plan amendment, development agreement, rezone, and other permits; and

WHEREAS, Kittitas County reviewed the Project Application in accordance with its applicable County Wind Farm ordinance, KCC 17.61A, which requires for a Wind Farm approval:

- an amendment to the County's Comprehensive Plan to designate the Project area as a Wind Farm Resource District,

- a zoning reclassification for the Project area to a Wind Farm Resource Overlay Zone,
- approval of a wind farm resource development permit, and
- a Development Agreement to set the conditions of approval; and

WHEREAS, the County issued a letter of incomplete application to the Applicant on October 13, 2005; and

WHEREAS, a revised application was received from the Applicant and a determination of complete application was sent to the Applicant on October 17, 2005; and

WHEREAS, a copy of the Applicant's Notice of Withdrawal of Petition for Preemption to the Energy Facility Site Evaluation Council ("EFSEC") for a Request for Preemption filed on February 10, 2004 was received by the County on October 14, 2005; and

WHEREAS, the County issued a Notice of Application pursuant to KCC 15A.03 on October 27, 2005 with a comment deadline of December 5, 2005; and

WHEREAS, the County issued a letter to the Applicant requesting further clarification on items raised during the comment period regarding residence and road location, and parcel ownership on November 14, 2005; and

WHEREAS, the Applicant submitted information clarifying the issues brought up in the letter issued by the County on November 14, 2005 and also submitted a CD-Rom of the FAA Determinations of Non-Hazard Certificates and Technical Memorandums for the revised analyses based on the new project site layout for Noise, Shadow Flicker and Visual Resources; and

WHEREAS, the County issued a Notice of Revised Application pursuant to KCC 15A.03 on December 2, 2005 with a January 3, 2006 comment deadline; and

WHEREAS, the Applicant submitted a Draft Development Agreement to the County on December 23, 2005; and

WHEREAS, the Kittitas County Planning Commission and Board of County Commissioners held a joint public hearing on the Project Application on January 10, 2006 to hear testimony and receive information from Applicant representatives, county staff and members of the public; and

WHEREAS, the Kittitas County Planning Commission and Board of County Commissioners held a continued joint public hearing on the Project Application on January 11, 2006 to hear testimony and receive information from Applicant representatives, county staff and members of the public; and

WHEREAS, the Kittitas County Planning Commission and Board of County Commissioners held continued joint public hearing on the Project Application on January 12, 2006 to hear testimony and receive information from Applicant representatives, county staff and

members of the public. Oral testimony was closed at said hearing and the comment deadline for written testimony for Planning Commission consideration was set for January 13, 2006 at 5:00 p.m. The Planning Commission at said hearing set a date of January 30, 2006 to continued the hearing for Planning Commission Deliberation and the Board of County Commissioners did set a date to continue to February 7, 2006 for the purposes of getting an update on the progress of the Planning Commission in considering the application; and

WHEREAS, the Planning Commission on January 30, 2006 held a continued Public Hearing for deliberations to consider the Project, and after reviewing the documents and testimony in the record voted unanimously to recommend denial of the Kittitas Valley Wind Power Project in its entirety; and

WHEREAS, the Planning Commission held a continued hearing to consider Findings to deny the Kittitas Valley Wind Power Project and forwarded these Findings to the Board of County Commissioners for consideration; and

WHEREAS, the Board of County Commissioners did on February 21, 2006 set a date for a continued open record hearing to consider the Project and the Planning Commission recommendation on March 29, 2006; and,

WHEREAS, on March 15, 2006 the Applicant submitted a response letter and matrix to the Findings of Facts of the Planning Commission; and,

WHEREAS, on March 29, 2006 the Board of County Commissioners held a continued public hearing on the Project Application to hear testimony and receive information; and

WHEREAS, on March 30, 2006 the Board of County Commissioners held a continued public hearing on the Project Application to hear testimony and receive information, Oral testimony was closed at said hearing and the comment deadline for written testimony for Board consideration was set for April 3, 2006 at 5:00 p.m. to be submitted to Kittitas County Community Development Services for staff transmittal to the Board; and,

WHEREAS, the Board of County Commissioners on April 12, 2006 held a continued hearing for deliberations on the Project and at said public hearing requested more information from the applicant and continued the meeting to April 27, 2006; and

WHEREAS, the members of the Board of County Commissioners individually conducted site visits to the Hopkins Ridge Wind Project in Columbia County in Washington between the April 12<sup>th</sup>, 2006 and April 27<sup>th</sup>, 2006 public hearings to observe possible impacts of a wind farm and each Commissioner reported back his observations on the record; and

WHEREAS, the Applicant submitted a response to the Board of County Commissioners request received during the April 12, 2006 public hearing on April 25, 2006 for Board consideration; and

WHEREAS, the Board of County Commissioners held a continued public hearing for deliberations on April 27, 2006; and

WHEREAS, the Applicant submitted a revised Development Agreement on May 1, 2006 in response to questions raised by the Board of County Commissioners during the April 12 and April 27, 2006 continued public hearings for deliberations; and

WHEREAS, the Board of County Commissioners reviewed the Project Application, Environmental Impact Statement, Applicant's original proposed Development Agreement, SEPA Mitigation Measures, Planning Commission Recommendations, Applicant's revised proposed Development Agreements and other documents in the record, and considered Public, Applicant and staff public comment; and

WHEREAS, the Board of County Commissioners on May 3, 2006 resumed its deliberations and unanimously voted to deny the Project Application, including the Wind Farm Overlay Resource District Subarea designation, Wind Farm Zoning Overlay District, Development Agreement and Development Permits and directed staff to prepare Findings of Facts and Conclusions at Law and a resolution for Board review at a continued public hearing scheduled for May 31, 2006; and

WHEREAS, the Board of County Commissioners received a letter from the Applicant on May 15, 2006 and in which the letter was discussed during the regular Agenda held on May 16, 2006; and

WHEREAS, on May 17, 2006, the Applicant represented by Erin Anderson, Dana Peck and Joy Potter met with County staff Darryl Piercy, James Hurson and Joanna Valencia to discuss the possibility of further negotiations occurring between the Applicant and the County; and

WHEREAS, on May 19<sup>th</sup>, 22<sup>nd</sup>, and 23<sup>rd</sup>, 2006 correspondence occurred between the Applicant and the County regarding pursuing further negotiations and clarification on setbacks for the project; and

WHEREAS, the Board of County Commissioners held a continued public hearing on May 31, 2006 to address and clarify questions from the Applicant concerning setbacks for the project and to review the draft resolution and Findings of Fact and Conclusions at Law prepared by staff; and

WHEREAS, the Board of County Commissioners held a continued public hearing on June 6, 2006 to review the draft resolution and Findings of Fact and Conclusions at Law as revised by staff from direction given by the Board during the May 31<sup>st</sup>, 2006 public hearing; and

WHEREAS detailed Consolidated Findings of Fact and Conclusions At Law for the Kittitas Valley Wind Power Project are attached hereto and incorporated herein by reference as if set forth in full and support the denial of the Project as proposed.

**NOW THEREFORE BE IT RESOLVED** that the Board of Kittitas County Commissioners, based upon the record including testimony and exhibits, and in the best interest of the community, does hereby DENY the Kittitas Valley Wind Power Project proposal.

**BE IT FURTHER RESOLVED** that the Board of County Commissioners hereby denies the Applicant's request to designate the project area as a subarea to the Kittitas County Comprehensive Plan.

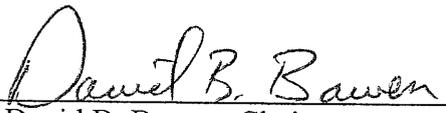
**BE IT FURTHER RESOLVED** that the Board of County Commissioners hereby denies the Applicant's request to rezone the project area as a Wind Farm Resource Overlay Zoning District.

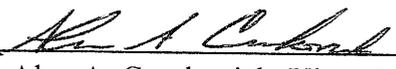
**BE IT FURTHER RESOLVED** that the Board of County Commissioners hereby denies the Applicant's request to enter into a development agreement for the project area under the terms and conditions proposed by the applicant.

**BE IT FURTHER RESOLVED** that the Board of County Commissioners hereby denies the Applicant's request for a development permit for the proposed project.

DATED this 6<sup>th</sup> day of June, 2006 at Ellensburg, Washington.

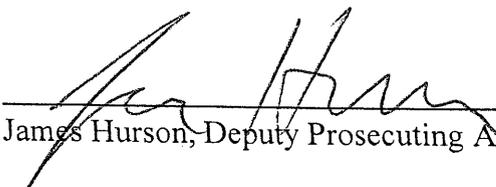
**BOARD OF COUNTY COMMISSIONERS  
KITTTAS COUNTY, WASHINGTON**

  
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David B. Bowen, Chairman

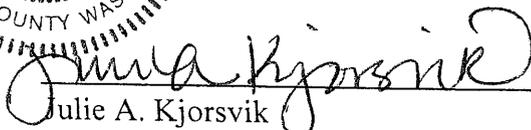
  
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Alan A. Crankovich, Vice- Chairman

  
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Perry D. Huston, Commissioner

**APPROVED AS TO FORM:**

  
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James Hurson, Deputy Prosecuting Attorney



  
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Julie A. Kjorsvik

**Findings of Fact and Conclusions at Law**  
Kittitas Valley Wind Power Project  
Z-05-22

1. On September 30, 2005 the applicant Sagebrush Power Partners LLC submitted a complete Development Activities Application for:
  - a. An amendment to the Kittitas County Comprehensive Plan utilizing the development of a subarea plan.
  - b. An amendment to the Kittitas County Zoning Map for a Wind Farm Resource Overlay Zone.
  - c. County consideration of a proposed development agreement.
  - d. Development Permit
2. Pursuant to RCW 80.50.180 the Energy Facility Site Evaluation Council (EFSEC) assumed lead agency status for this project for SEPA. As part of Kittitas County's review of the project, all SEPA materials were considered.
3. On December 23, 2005 EFSEC issued a Draft Environmental Impact Statement (DEIS) Addendum for the Kittitas Valley Wind Power Project.
4. On January 10, 11 and 12, 2006, joint public hearings were conducted by the Kittitas County Planning Commission and Kittitas County Board of County Commissioners. Upon completion of public testimony the Board of County Commissioners continued their hearing leaving open the public record while the Planning Commission closed their record and entered deliberations.
5. On January 30, 2006 the Kittitas County Planning Commission unanimously recommended denial of the application and on February 13, 2006 approved findings to transmit to the Board of County Commissioners. The planning commission unanimously recommended that the BOCC deny the Kittitas Valley Wind Power Project proposal in its entirety.
6. Beginning on March 29, 2006 and continued to March 30, 2006, April 12, 2006, and April 27, 2006, the Kittitas County Board of Commissioners held public hearings on the Kittitas Valley Wind Power Project proposal.
7. The comprehensive plan provides that wind farms are only allowed in areas designated in the comprehensive plan as wind farm resource areas. (GPO 6.34)
8. The project area proposed by the applicant is not designated as a wind farm resource area in the comprehensive plan. (See current comprehensive plan land use map)
9. The project area as proposed is currently designated under the comprehensive plan as Rural lands. The project is not designated as resource lands under the comprehensive plan. (See current comprehensive plan land use map)

10. Wind farms are not currently allowed in the existing zoning of the project area. (KCC 17.29; KCC 17.56; KCC 17.61A.)
11. The proposed project area involves land currently zone as Ag 20 and FR 20. FR 20 zone provides that structures may not exceed 35 feet in height unless they are agricultural structures. (KCC 17.56.070)
12. The proposed wind turbines exceed 35 feet in height. (See Application figure 1 at page 4 of 19.)
13. The wind turbines proposed for the project are not agricultural structures. (See Application Section 1 at page 3 of 19.)
14. The applicant has proposed a setback from existing residential structures of 1320 feet. (See revised Development Agreement Draft 4/28/2006 Section 5.14) No visual assessments have been conducted at a distance as short as 1320 feet. (See KV DEIS Chapter 3.9; See also Desert Claim FEIS and Wildhorse FEIS)
15. Wind turbines will be visible from locations other than the viewpoint assessment locations in the DEIS. (KVDEIS 3.9-5) Removal of turbines to mitigate the views for those viewpoint assessment locations only addresses the visual impacts for the visual assessment locations and not the other areas that would be impacted.
16. The visual assessment analysis ranks visual impacts on a scale of “low”, moderately low”, moderate, moderately high”, and “high.” A visual assessment of “high” indicates the most severe negative impact on that scale. (See KVDEIS 3.9-1 to 3.9-1)
17. Visual assessment that were taken within one half mile of proposed turbines demonstrate a “high” visual impact (the worst visual rating) (See KVDEIS Figures 3.9-17 and 3.9-20)
18. A “high” impact is a significant adverse environmental impact. The negative impact demonstrated in the DEIS for this proposal is consistent with the FEIS analysis for the Desert Claim Windpower Project proposal. That FEIS demonstrated that visual impacts were “high” within one half mile of a turbine and that at such proximity the turbines “dominate” the visual. (DCFEIS pg 3-250, 3-251, 3-257)
19. In general the visual impacts and shadow flicker impacts diminish as the distances increase. (See KVDEIS Chapter 3.9; KVDEIS Addendum Chapter 3.9; DCFEIS 3-250)
20. More than twenty residences of nonparticipating property owners are located within a half mile of proposed turbines. (Applicants 1/11/06 Powerpoint presentation Exhibit #18 pages 15-16)
21. The visual impacts from the turbines can be mitigated from ‘High’ to moderate with increased setbacks. (See KVDEIS Chapter 3.9; DCFEIS 3-250)

22. The applicant refused to consider any increase to their proposed 1320 foot setbacks to mitigate the impacts.
23. At 1320 wind turbines dominate the view and create a significant adverse environmental impact. (See KVDEIS Figures 3.9-17 and 3.9-20; DCFEIS pg 3-250, 3-251, 3-257)
24. "Shadow flicker" from a wind turbine can extend to over 5000 feet. For example, one neighboring land owners residence located 5080 from a nearest turbine will experience shadow flicker impacts 113 days of the year. (Applicants 1/11/06 Powerpoint presentation Exhibit #18 pages 15-16)
25. More than forty nonparticipating property owners' residences would experience shadow flicker from the project as proposed by the applicant with the shadow flicker. (Applicants 1/11/06 Powerpoint presentation Exhibit #18 pages 15-16). The location of all of the proposed wind turbines has not yet been disclosed by the applicant. As such impacts may be greater since location of turbines can greatly change impacts. ( See DEIS Table 3.4-2 at page 3.4-11)
26. Additional setbacks beyond those proposed by the applicant would not eliminate all shadow flicker to all those residences, but would mitigate the impacts. (Applicants 1/11/06 Powerpoint presentation Exhibit #18 pages 15-16) The applicant refused to discuss any additional setback to mitigate shadow flicker.
27. The placement in the project area of the wind farm as proposed is not properly mitigated with adequate setbacks and is incompatible with the neighborhood.
28. The applicant has asserted without explanation or proof that the project would not be economically viable if setbacks to mitigate the negative environmental impacts were included.
29. An alleged lack of economic viability by an applicant is not an appropriate basis to ignore environmental analysis and not require mitigation.
30. There is significant land area within the proposed sub area boundary to still place turbines with increased setbacks from existing nonparticipating homeowners and property owners that would mitigate the visual impacts
31. A review of the 2003 turbine layout proposal indicates that with properly mitigated setbacks a wind farm with dozens of wind turbines could be more centrally placed within the proposed project area. (See KVDEIS Figure 2-1; Development Activity Application dated 6/10/03 Exhibits 2, 3, and 4)
32. The applicant has declined to discuss any such mitigated configuration that would allow a properly mitigated wind farm.

33. The personal observations of the individual members of the Board of County Commissioners are consistent with the environmental analysis that has been performed regarding visual impact and shadow flicker impacts.
34. The proposal fails to properly mitigate the impact. The exercise of substantive SEPA authority pursuant to WAC 197-11-660(1) (b) and KCC 15.04.200 allows for denial of the project due to the significant adverse visual and shadow flicker impacts, the reasonable mitigation of increased setbacks has been refused by the applicant and cannot be imposed in the development agreement without the consent of the applicant, and the denial is consistent with the SEPA policy of maintaining aesthetically pleasing surroundings
35. The development agreement proposed by the applicant is deficient in multiple respects and would require many modifications to in form and substance before it would be acceptable for approval as a development agreement. The applicant, however, declined to discuss or consider any further revisions to the proposed development agreement.
36. On May 3, 2006, the Kittitas County Board of Commissioners voted unanimously to deny an amendment to the Kittitas County Comprehensive Plan utilizing the development of a subarea plan, an amendment to the Kittitas County Zoning Map for a Wind Farm Resource Overlay Zone, County consideration of a proposed Development Agreement and a Development Permit thus denying the Kittitas Valley Wind Power Project proposal in its entirety.
37. The Project applicant submitted a Development Activities Application, which included a proposed designation of a sub area as a Wind Farm Resource District. That application was determined complete under Kittitas County Code 15A.03 and the public review process was initiated. Such a designation is inappropriate given the impacts of this project in relationship to nonparticipating property owners, impacts to the surrounding neighborhood, consideration of GPO 6.10, GPO 6.22, GPO 6.23 and GPO 8.9 and for the reasons set forth herein.
38. The Kittitas County Board of Commissioners finds that the Project is not in compliance with all of the criteria for a rezone as required by Kittitas County Code 17.98 and the GMA. The project area is not designated as a Wind Farm Resource Overlay District in the comprehensive plan. GPO 6.34 of the comprehensive plan provides that wind farms may only be located in areas designated as Wind Farm Resource overlay districts in the Comprehensive Plan. In that the comprehensive plan subarea amendment has been denied a rezone to a Wind farm Resource overlay District would be contrary to the comprehensive plan and the requirements of the GMA. The project also fails to meet the underlying rezone criteria. The project proposal does not bear a substantial relationship to the public health, safety or welfare and is incompatible with the surrounding neighborhood.
39. The project area is in close proximity to many individual nonparticipating homeowners and property owners. This area of the county has the character of rural residential and agricultural mixed use. The introduction of turbines of this size and number to this area is incompatible in such close proximity to the current uses. The Draft EIS and other

environmental analysis demonstrate that the project as proposed involves significant, unavoidable, adverse impacts to the visual environment. The mitigation offered to residents who may be affected by shadow flicker required the nonparticipating property owner neighbors to mitigate the impact on their own property. The project also included other low, medium and significant non-mitigated impacts associated with the project. The Board finds that the Project as proposed is not a reasonable development of the subject property given its impacts

37. The Kittitas County Board of Commissioners finds that the Project is not in compliance with all of the requirements for a Development Agreement as authorized by Chapter 15A.11 Kittitas County Code and RCW 36.70B.170 through 36.70B.210. The Project did not adequately address the requirement that development standards applicable to the development of a specific wind farm require that impacts be mitigated KCC 15A.11.010. The inability of the Project to adequately mitigate related low, medium and significant non-mitigated impacts associated with the Project and the denial of the rezone to a Wind Farm Resource Overlay Zone renders the Project non-compliant with the requirements for approval of a Development Agreement.
- 38 The Kittitas County Board of Commissioners does not find the Project in compliance with all of the requirements for a Development Agreement and therefore denies a Development Permit, which is required for an approved wind farm under KCC 17.61A.
- 39 Kittitas County Code 17.61A.040 requires that a determination be made that the proposal is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood. The Board is unable to make this determination due to remaining unresolved concerns including shadow flicker and the visual environment for the nearby rural residents. The Board finds that requiring residents to mitigate an adverse impact caused by the proximity of the Project to existing residences is detrimental to the public health, peace and safety. Location of the Project to a less populated site could negate shadow flicker as an adverse impact to existing residents and thus fully mitigate the issue of shadow flicker.
- 40 The Board finds that identified adverse impacts could not be mitigated, either on site or off site, due to the proximity of the proposed facility to nearby residences and property. The Board finds that a minimum of 2500 feet separation from wind turbines and non-participating landowner's residences would be necessary to reduce the significant adverse impact rating of "high" down to moderate visual impacts for those residences. Even at a distance greater than 2500 feet some areas will still experience impacts greater than moderate. (see KVDEIS Addendum page 3-25).
- 41 Based on the Findings of Fact above, the Kittitas County Board of Commissioners concludes that the Development Activities Application determined to be complete on October 17, 2005, submitted by Sagebrush Power Partners LLC, requesting approval of the Kittitas Valley Wind Power Project through amendment to the Kittitas County Comprehensive Plan as a designated subarea, an amendment to the Kittitas County Zoning Map for a Wind Farm Resource Overlay Zone, County approval of a development agreement with the Applicant and receipt of a Development Permit from Kittitas County required for approval of a site specific wind farm have not been

determined to be in compliance with the criteria necessary for approval and therefore have been denied.

- 42 The denial of the proposed sub area designation and amendment to the comprehensive plan, the denial of the rezone request, the denial of the proposed development agreement, and denial of the development permit are in full compliance with the Growth Management Act.
- 43 References to the record, codes or law that are set forth in these Findings of Fact and Conclusions at Law are not the exclusive portion of the record in support of the statement and are intended to be only illustrative examples of a portion of the record or law in support of the statement.