



1 and WAC 463-28-040 are framed in a ninety-day period to obtain land use compliance.  
2 This shows that the EFSEC regulations regarding local land use consistency  
3 contemplate reasonable efforts to resolve the issue in a traditional zoning context, not in  
4 a siting/permitting context. The County's lengthy and duplicative land use process is  
5 actually a project specific siting/permit process, which includes an invalid environmental  
6 impact statement review procedure. The process being demanded by Kittitas County, if  
7 followed, will undermine the EFSEC process as well as the direction provided by the  
8 legislature, and is in violation of EFSEC's preemption authority.

### 9 10 **Statutory Framework**

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

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19 promulgated thereunder shall be deemed superseded for the purposes of this  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

21  
22 (2) The state hereby preempts the regulation and certification of the location,  
23 construction, and operational conditions of certification of the energy facilities  
24 included  
25 under RCW 80.50.060 as now or hereafter amended.

26 RCW 80.50.120 (3) further states:

27 Effect of certification. (1) Subject to the conditions set forth therein any  
28 certification shall bind the state and each of its departments, agencies, divisions,

1           bureaus, commissions, boards, and political subdivisions, whether a member of  
2           the council or not, as to the approval of the site and the construction and  
3           operation of the proposed energy facility.

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

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

11         The legislature amended RCW 80.50 during the last energy crisis pursuant to Sec 1,  
12         chapter 214, Laws of 2001, showing its concern regarding impediments to providing  
13         adequate energy resources to the state and region. The legislature again stressed the  
14         importance of the state's interest regarding energy facilities and its ability to preempt  
15         local land use ordinances to provide for that interest by its adoption of RCW  
16         80.50.010(5), which provides:

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

19  
20         The State of Washington for the reason stated in RCW 80.50.010 has preempted the  
21         siting of the energy facility subject to this proceeding, including the land use ordinances  
22         and permits that would have otherwise been required by Kittitas County. In 1978  
23         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  
27         application to the local jurisdiction for zoning and land use changes and make all  
28         reasonable efforts to resolve the noncompliance. WAC 463-28-040 provides that the  
29         Applicant must file a written request for preemption of the local land use regulations, if

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

### 8 9 **Kittitas County Ordinance**

10  
11 On August 7, 2001, the Kittitas County Board of County Commissioners (BOCC)  
12 unanimously adopted Ordinance 2001-12, an amendment to Chapter 17.61 of the  
13 Kittitas County Code (KCC) allowing Major Alternative Energy Facilities (including wind  
14 farms) as a conditional use in the Agriculture-20, Forest and Range, Commercial Ag and  
15 Commercial Forest zoning designations. The Kittitas County Board of Adjustment was  
16 given the authority to authorize a conditional use permit for such a project. This was  
17 adopted without controversy or opposition.

18  
19 On December 3, 2002, the Kittitas County BOCC changed the zoning ordinance adopting KCC  
20 Chapter 17.61A pertaining to wind farm development to shift responsibility for reviewing and  
21 permitting wind farms from the Board of Adjustment to the BOCC. It was patterned after the  
22 process Kittitas County used to site and permit the Mountain Star master planned resort. This  
23 process requires four separate elements: 1) A development agreement, 2) A site-specific rezone  
24 to Wind Resource Overlay Zone, 3) A sub-area comprehensive plan amendment, and 4) A  
25 development permit. It did not provide for a zoning designation for wind farms in areas of the  
26 County in which they could be built, but instead set up a siting/permitting process which potentially  
27 allowed one to be built anywhere in the county within Ag. 20, Forest and Range, Commercial Ag  
28 and Commercial Forest zones. Proposed permit conditions were to be addressed on a project-by-  
29 project basis with site-specific evaluations. In adopting this ordinance, the County rejected a

1 proposal from its Planning Commission to adopt a traditional zoning ordinance for wind farms in  
2 favor of the existing, site-specific approach.

3  
4 The entire County is inconsistent for a wind farm use because wind farms were not  
5 designated as a permitted use in any of the County's zoning classifications. The County  
6 did not go through a zoning process that would designate areas in which a wind farm  
7 could be permitted, but instead adopted a siting/permit process to evaluate proposals on  
8 a case-by-case basis. In essence, the BOCC decided to not zone, but rather to apply a  
9 siting/permitting process allowing wind farms anywhere in the above-referenced zoning  
10 designations. Anyone proposing to build a wind farm would be required to apply for a  
11 Wind Farm Resource Overlay Zoning District for the specific parcels where it plans to  
12 build. Pursuant to the ordinance, a wind farm may be authorized by the BOCC only  
13 through approval of a Wind Farm Resource Development Permit in conjunction with  
14 approval of a development agreement.

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

29  
30 **Applicant's Good Faith Efforts to Resolve Inconsistency**

1 The Applicant has prepared a detailed chronology of its communications and good faith  
2 efforts to resolve the land use inconsistencies with Kittitas County. This chronology is  
3 attached as Exhibit 1 and incorporated by reference as if fully set out.

4  
5 The Applicant filed an Application for Site Certification with EFSEC on January 13, 2003.  
6 At the time of filing, the Applicant had already commenced contacts with the County in  
7 an attempt to resolve the land use consistency issues. The Applicant consulted with  
8 Kittitas County, originally in the hopes of proposing an ordinance similar to one adopted  
9 by Walla Walla County for the Wallula Generating Project, which provided land use  
10 consistency under certain conditions in the event EFSEC approved the project. The  
11 Applicant was concerned that the new wind farm siting ordinance adopted by the County  
12 was duplicative of the EFSEC process and excessively time consuming. There was  
13 considerable communication on this issue between the time of filing and the spring of  
14 2003. The County demanded that the Applicant submit to its siting process set out in  
15 KCC 17.61A. The Applicant continually asked for clarification and the details of the  
16 County process including potential schedule. The Applicant was told by the County that  
17 the siting process was not fully developed and unclear, and that County staff did not  
18 know the precise timeline or schedule for completing the process . The Applicant  
19 continually expressed concern regarding the fact that both the EFSEC and County  
20 processes were similar in that they were both siting processes for specific projects and  
21 would create duplication. The Applicant suggested that the County and EFSEC work  
22 together regarding the process to avoid duplication. The Applicant was suggesting a  
23 text amendment, possibly along the lines of that adopted by Walla Walla County for the  
24 Wallula Generating Project (a project recently reviewed and approved by EFSEC) or a  
25 possible joint hearing process to avoid duplication. The Applicant and the County  
26 continued to discuss options other than the process outlined in KCC 17.61A without  
27 such other options being totally rejected until March 18, 2003. On that date,  
28 Commissioner Huston informed the Applicant that he would not consider a text  
29 amendment. During this time period, the Applicant had suggested several times that the

1 County, Applicant and EFSEC staff meet together to see if they could come up with a  
2 process that would avoid duplication and meet the purposes of the County, Applicant  
3 and EFSEC. County staff declined to participate in such a meeting despite numerous  
4 suggestions to do so by the Applicant.

5  
6 At first, the County contended that it had to go through a full SEPA process of its own.  
7 After much discussion and pointing out that RCW 80.50.180 exempts the County from  
8 developing an Environmental Impact Statement (EIS), the County apparently agreed.  
9 Commissioner Huston stated on February 7, 2003 that the County need not duplicate  
10 the SEPA EIS review already underway by EFSEC. On April 25, 2003 Commissioner  
11 Huston confirmed to the Applicant that the County would not be conducting SEPA  
12 review. On April 28, 2003 the deputy county prosecutor working on the matter said that  
13 a separate County EIS review was not appropriate given EFSEC's role.

14  
15 In March 2003, the Applicant agreed to pursue the County's request to apply to the  
16 County pursuant to KCC 17.61A, despite the fact that the Applicant had not been given  
17 details or any timeline regarding the process. The Applicant then started to develop a  
18 County land use application. The details of the process and communications between  
19 the County and the Applicant regarding the County application are set out in Exhibit 1.

20  
21 EFSEC held a Land Use Consistency Hearing on May 1, 2003 in Ellensburg. The  
22 Council found that the project was not consistent with County land use ordinances. Mr.  
23 C. Taylor stated that the Applicant intended to file a land use application with Kittitas  
24 County to seek consistency with local land use and zoning, but that the Applicant  
25 believed it was necessary to have a clear understanding of the process and timeline for  
26 the County's review of the land use application prior to filing any such application. On  
27 May 7, 2003 EFSEC entered an Order finding that the Applicant's proposal was not  
28 consistent with local land use plans and zoning ordinances and directed that the  
29 Applicant undertake further actions. The Applicant was ordered by the Council to make  
30 the necessary applications with the County and report back to the Council on the "status

1 of negotiations” within 90 days whether the efforts were successful or file a request for  
2 preemption or extension thereof. The first 90-day period in which the Applicant was  
3 required to obtain consistency commenced to run. At the May 12, 2003 EFSEC  
4 meeting, the Applicant requested and received an extension of the time for filing a  
5 preemption request until September 1, 2004. Later EFSEC extended the time to  
6 January 15, 2004 and subsequently to February 12, 2004.

7  
8 Based on statements of the County at the time the Applicant decided to apply pursuant  
9 to KCC17.61A, the Applicant believed the County was not going to engage in a SEPA  
10 EIS and review process. Although the County process had not been described, based  
11 on general discussions, the Applicant believed that the County would start its process  
12 upon receipt of the land use application and the County process could be completed in  
13 about 90 days. Later in the early summer of 2003, the County stated that it would not  
14 commence the process until it received a copy of the EFSEC DEIS. The Applicant was  
15 somewhat surprised, but with the Applicant’s understanding that the land use  
16 compliance issues could be resolved in about 90 days from the issuance of the DEIS,  
17 the Applicant decided waiting for the issuance of the DEIS was something the Applicant  
18 could I tolerate and did not to make an issue of the matter.

19  
20 In August of 2003, the County raised the issue that it wanted to have EFSEC include an  
21 analysis of off-site alternatives in the EFSEC DEIS. The County was exempted from an  
22 EIS requirement pursuant to RCW 80.50. 180; however, the County requested the  
23 information for its own analysis. Again, the Applicant supported the County and  
24 accepted the delay created by the further analysis, believing the County would complete  
25 its process in about 90-days after the issuance of the DEIS. EFSEC agreed to include  
26 the off-site alternatives analysis in its DEIS.

27  
28 On October 15, 2003, for the first time, the County verbally outlined details of its process  
29 and schedule, in response to repeated requests from the Applicant for such information.  
30 This process and schedule included County staff review of the EFSEC DEIS to

1 determine adequacy. This was contrary to the Applicant's understanding based on  
2 previous statements from the County that the SEPA EIS review process was to be left to  
3 EFSEC. The process as described by the County would have taken at least 7 months  
4 from the end of the public comment period on the DEIS. The Applicant became very  
5 concerned that the County was apparently duplicating the EFSEC SEPA process and  
6 reserving to the County the determination of the adequacy of the EFSEC DEIS and the  
7 responses to comments, before the County would complete its process. This created  
8 the potential to cause the Applicant almost unlimited delays in the County process.

9  
10 Mr. C. Taylor sent a letter to Mr. Clay White on October 30, 2003 thanking him for taking  
11 the time to meet with him and Mr. Peoples regarding the County's anticipated process  
12 for reviewing the KVVPP land use application. Attached to the letter was a draft  
13 schedule for the County's review process that Mr. C. Taylor put together based on the  
14 steps and timelines the County described verbally at the meeting on 10/15/05 (the letter  
15 and the attached schedule are set out in Exhibit 1). Mr. Taylor expressed his concerns  
16 about the lengthy timeline, particularly given that the County is statutorily exempt from a  
17 SEPA EIS requirement. Mr. C. Taylor suggested the County eliminate potentially  
18 redundant SEPA steps that are already built into the EFSEC process so the County  
19 could accelerate its review process and reduce unnecessary demands on the County.  
20 Mr. Clay White responded by an email to Mr. C. Taylor on November 5, 2003. In the  
21 email Mr. White states that, "Kittitas County cannot commit to specific project timelines  
22 because we have no control of the environmental documents being prepared by Shapiro  
23 and EFSEC...By suggesting that we eliminate portions of the review process, you are  
24 asking [Kittitas County] to break state and local land use laws." The portions of the  
25 review process suggested to be eliminated were related to the review of the SEPA DEIS  
26 from which the County was exempted. Even if the County had not been exempted,  
27 there was no requirement for the County's proposed SEPA review process because  
28 EFSEC would have been the lead agency pursuant to WAC 197-11-938(1).

1 The Draft Environmental Impact Statement (DEIS) for Kittitas Valley Wind Power Project  
2 was released by EFSEC on December 14, 2003. On December 15, 2003 EFSEC held a  
3 special meeting. Applicant representatives attended in person, (D. Peeples and C.  
4 Taylor) and Kittitas County (J. Hurson) participated via telephone. Irina Makarow,  
5 EFSEC siting manager, provided a status report to the Council. Ms. Makarow stated  
6 that the Applicant had requested an extension of the 12-month statutory processing  
7 time. Chair Luce asked J. Hurson what the timeframe was for completion of the  
8 County's review of the Applicant's land use application. Mr. Hurson responded that the  
9 County did not yet know when their review would be completed and that the County's  
10 schedule was dependent on the timing of EFSEC's DEIS and response to comments on  
11 the DEIS. Chair Luce instructed the County to provide a written explanation of the  
12 process and timeframe for completing review of the land use application no later than  
13 1/13/04 at the pre-hearing conference in Ellensburg. Chair Luce stated that EFSEC  
14 needed "a definitive statement from the County" on how they planned to proceed with  
15 review of the land use application.

16  
17 Mr. Peeples stated that the Applicant was continuing to work with the County regarding  
18 schedule and process for review of the Applicant's land use application but that the  
19 Applicant still did not have a schedule or even a definitive process from the County. Mr.  
20 Peeples noted concerns about the length of time that the County's review might take to  
21 complete and potential problems such delay might create for the overall EFSEC review  
22 schedule. In response to a question from Council member Towne, Ms. Makarow  
23 responded that the release of the DEIS had been delayed because a) Kittitas County  
24 had requested that EFSEC's DEIS consider off-site alternatives, which was not originally  
25 within the scope of work of EFSEC's independent consultant preparing the DEIS,  
26 Shapiro and Associates, and b) new information regarding the impacts of the Desert  
27 Claim project became available from the County DEIS process which was included in  
28 the cumulative impacts analysis for all three proposed wind power projects in Kittitas  
29 County (Kittitas Valley, Desert Claim and Wild Horse.) Mr. Hurson responded by stating  
30 that he found it "offensive" for EFSEC staff (Irina Makarow) to suggest that Kittitas

1 County had delayed the EFSEC review process and that “Kittitas County had not  
2 delayed the process by one day.”

3  
4 EFSEC held a pre-hearing conference in Ellensburg on January 13, 2004. In response  
5 to the previous request from Chair Luce for the County to provide a definitive statement  
6 regarding the process and timeline for completing land use review for the project, J.  
7 Hurson and C. White present a one-page flow chart of the County’s proposed process  
8 entitled “Possible timeline for processing the KV Wind Power project”, a copy of which is  
9 attached hereto as Exhibit 2, and incorporated by reference herein as if fully set out. The  
10 schedule established by the flow chart was similar to the one described verbally to the  
11 Applicant on October 15, 2003, but in addition made it absolutely clear that the County  
12 was engaging in its own SEPA EIS review process and that the County intended to rule  
13 on the adequacy of the EFSEC DEIS. The County was clearly refusing to proceed, if in  
14 its own discretion, the County decided it wanted more information included in the EFSEC  
15 EIS. An additional extension for preemption request was made by the Applicant and  
16 granted by EFSEC extending the time until February 12, 2004.

17  
18 EFSEC held a public comment meeting regarding the DEIS in Ellensburg on the evening  
19 of January 13, 2004. In his verbal comments, Mr. C. White of the County’s Community  
20 Development Services Department noted that he believed the DEIS needed additional  
21 work in several areas. In his written comments, dated 1/12/04, Mr. White provided 14  
22 pages of comments that essentially proposed a major revision of the entire DEIS.

23  
24 On January 19, 2004 the Applicant requested that Ellensburg Chamber of Commerce  
25 Executive Director Allan Walker facilitate a meeting and attempt to mediate the issues  
26 between representatives of Kittitas County, the Applicant and EFSEC to make a final  
27 attempt at reaching agreement regarding the process and timeline for County review of  
28 the local land use consistency issue. Mr. Walker agreed and extended the offer to the  
29 County. On January 22, 2004, Mr. C. White of Kittitas County declined the invitation to  
30 meet with Applicant and ESFEC and informed Mr. Walker that the County does not see

1 any point in such a meeting because the County has made its position clear and does  
2 not believe the proposed process and timeline can be modified in any way.

3  
4 **Applicant and County are Unable to Come to Agreement**

5  
6 The County process as set out in KCC 17.61A is a siting/permitting process that is  
7 duplicative of the EFSEC process. The history of the ordinance and statements by the  
8 County show that it is a siting rather than a zoning ordinance. Only one year prior to  
9 adopting KCC 17.61A, the County had adopted a conditional use permit process for  
10 alternative energy facilities, including wind energy facilities (Ordinance No. 2001-12,  
11 adopted August 12, 2001 and codified at KCC 17.61). This Ordinance established a  
12 conventional conditional use permit process for wind energy facilities, based upon clear  
13 criteria. The Ordinance was clear in allowing wind projects, by conditional use permits,  
14 in the Agricultural-20, Forest & Range, Commercial Agriculture, and Commercial Forest  
15 zones. The BOCC adopted Ordinance 2001-12 unanimously, following public hearings  
16 before the Planning Commission and the BOCC.

17 In the summer of 2002, faced with a public controversy concerning wind energy facilities  
18 being considered in the County, the Planning Commission recommended that the zoning  
19 code be amended to establish an “overlay zone” based upon explicit criteria, which  
20 would allow wind energy facilities in designated areas of the County. However, the  
21 BOCC rejected this approach and instead adopted a process that was patterned after  
22 the process used to site and permit the Mountain Star master planned resort. The  
23 Mountain Star resort is a rural residential master planned resort community allowed  
24 under the Growth Management Act based upon compliance with the criteria in RCW  
25 36.70A.360. To comply with the strict requirements for allowing master planned resorts  
26 (MPRs) in rural areas, the County crafted a process, which blended (and linked)  
27 legislative planning and zoning functions with quasi-judicial permitting functions.

28 The approach for the Mountain Star resort may have been sensible to site a residential  
29 resort community outside urban growth areas in accordance with RCW 36.70A.360.

1 However, for the following reasons, it is a poor approach for considering energy facility  
2 siting. With the initial enactment of the GMA, allowance of master planned resorts  
3 (MPRs) in rural areas (i.e. outside of Urban Growth Areas) was not resolved, leading to  
4 confusion about how they could be reconciled with the GMA's "anti-sprawl" goal.  
5 Consequently, the legislature amended the GMA in 1998 to clearly add MPRs as an  
6 allowed use, under tightly constrained limitations. MPRs are considered a narrow  
7 exception to the GMA planning goals, particularly including the "anti-sprawl" mandate,  
8 aimed at protecting rural land uses (RCW 36.70A.020). In order to permit MPRs, the  
9 1998 GMA amendment requires significant local legislative revisions to comprehensive  
10 plans, zoning, and capital facilities plans, and also requires clear consideration of  
11 impacts to timber and agricultural production and consistency with development  
12 regulations. Kittitas County solved the dilemma of amending plans and zoning while  
13 approving the pending Mountain Star proposal by adopting the concurrent sub-area  
14 plan, zoning, development agreement and development permit approach, all aimed at  
15 one specific project site. Contrary to the MPR scenario, commercial e wind energy  
16 facilities require a rural (i.e. non-Urban Growth Area) site, and are considered to be  
17 wholly compatible with (and complementary to) rural land uses, particularly farming and  
18 ranching. Wind energy facilities do not induce residential sprawl or other incompatible  
19 land uses.

20 The issues facing MPRs, such as the need to prevent urban sprawl, the extension of  
21 urban level water and sewer service, and the need to preserve and protect rural natural  
22 resource production, are all inapplicable to wind energy facilities. The legislature's  
23 requirement for planning and zoning amendments for MPRs is wholly inapplicable to  
24 wind energy facilities. Indeed, prior to the 2002 Ordinance, the County plan and zoning  
25 code allowed, and were already wholly consistent with, wind energy development. In  
26 short, the requirements in the GMA for a special consideration of comprehensive  
27 planning, zoning and site-specific issues are unique to MPRs – a land use which, if not  
28 property approved, can easily violate and undermine many GMA goals and  
29 requirements. As discussed below, in an EFSEC setting, this use of an MPR model for  
30 energy facilities is particularly confounding, making duplication of siting review inevitable,

1 and making it impossible for an applicant to seek and obtain a determination of  
2 consistency with local planning and zoning, without submitting to duplicative siting  
3 review.

4 The Board of County Commissioners repealed one-year-old zoning code provisions,  
5 which explicitly allowed wind energy facilities in specific zoning districts, based on  
6 compliance with clear, conventional conditional use criteria. Instead, the BOCC decided  
7 to analyze specific private projects at specific sites requested by developers. However,  
8 the ordinance requires a site-specific “sub-area plan” amendment and a rezone, then (or  
9 possibly concurrently) requires a development agreement and a development permit.

10 The new process blends traditional legislative planning and zoning functions (sub-area  
11 comprehensive planning and zoning) with quasi-judicial functions typically associated  
12 with permit issuance. The County has advised the Applicant that the development  
13 agreement (typically associated with site-specific permitting issues) is the key “driver” for  
14 the overall planning and zoning process, but it will ultimately also include site-specific,  
15 project-level conditions.

16 This blended process inextricably links these functions, while wholly depriving an  
17 applicant of the procedural safeguards required for either and/or both legislative and  
18 quasi-judicial processes. For example, the sub-area planning and zoning action is not  
19 limited to policy-related, legislative planning considerations, but reviews detailed, site-  
20 specific project design issues. Yet by inextricably connecting this process with permit  
21 review, the County reserves for itself maximum discretion to act in an arbitrary fashion  
22 without the due process protections afforded to a permit applicant. And perhaps most  
23 disturbing for the Applicant in these proceedings, by tying the site-specific rezone,  
24 development agreement and permit to a “sub-area plan amendment,” the County  
25 purports to shield itself from the legislative “Regulatory Reform Act” mandates (Ch.  
26 36.70B RCW) which require a fair, predictable and timely permit process, based upon  
27 clear, adopted objective criteria (See RCW 36.70B.020(4), which excludes site-specific  
28 rezones which are not previously authorized by a comprehensive plan or sub-area plan).  
29 The Applicant doubts that the Legislature intended this kind of “end-run” around

1 fundamental procedural due process safeguards under the guise of sub-area planning,  
2 which is **not** typically associated with individual project development sites.

3 The essence of this approach as applied by the County in these proceedings is a  
4 complete inability of the Applicant to decouple the legislative (plan and zoning  
5 amendment) process from the siting/permitting process. Under the County's 2002  
6 ordinance, the planning and zoning enabling wind energy facility development does not  
7 attach to the project site until the project is **fully permitted**. Yet the County's ordinance  
8 provides absolutely no meaningful criteria for an applicant to assess whether a particular  
9 project site could be approved. This approach is antithetical to traditional, sound land  
10 use planning and zoning processes, depriving an applicant of any right or opportunity to  
11 rely upon an established legislative policy framework, providing no stable, predictable  
12 legal permitting setting.

13 The County demands that proposed permit conditions be addressed on a project-by-  
14 project basis with site-specific evaluations. It contemplates developing project-specific  
15 criteria, rather than overall zoning criteria for a particular purpose. Faced with a clear  
16 duplication with EFSEC's siting standards, the County has completely refused to reach  
17 any compromise, which would rationalize its bewildering process and decouple  
18 planning/zoning and siting standards. It is precisely because of this arbitrary process  
19 and the County's end-run around due process protections afforded in both zoning and  
20 siting processes that both the local land use and the SEPA compliance issues regarding  
21 this project have become so complex. If the issue were simply whether the Applicant  
22 can reasonably seek and obtain "consistency" with land use plans or zoning ordinances,  
23 the "path" to compliance would be clear. However, when planning and zoning is blended  
24 with site-specific permitting in an un-tested, bewildering siting process (based on a  
25 wholly inapplicable rural residential resort model), enforced by a County which has  
26 shown no respect for EFSEC's siting authority, "compliance" and "consistency" with local  
27 land use plans and zoning is not capable of any reasonable resolution.

28

1 The County is duplicating the EFSEC siting process and causing unreasonable delay.  
2 The County is expecting EFSEC to delay its process until it has completed its own  
3 arbitrary siting/permitting process. Over the last year, the Applicant has diligently  
4 attempted to resolve the issue. The Applicant made application to the County without a  
5 disclosure from the County regarding the details and timelines of its procedure. The  
6 Applicant continually requested a description of the County's decision-making process  
7 and general schedule in writing starting in January of 2003. On February 6, 2003 deputy  
8 county prosecuting attorney Mr. Hurson stated that he could not tell the Applicant what  
9 the process was because it was unclear and not fully developed. The Applicant made  
10 several requests for a description of the process until the County finally informed the  
11 Applicant orally of a process and timeline on October 15, 2003. However the County  
12 consistently refused to put their oral representations into writing. It was not until EFSEC  
13 Chair Luce requested a description of the process and schedule of the County at  
14 EFSEC's special meeting on December 15, 2003, to be provided by the prehearing  
15 conference on January 13, 2004. Finally the County produced a written procedure and  
16 general schedule at the prehearing conference of January 13, 2004.

17  
18 The County procedure and timetable finally disclosed by the County on January 13,  
19 2003 is illustrated in the flow chart provided by Mr. C. White and Mr. J. Hurson attached  
20 in Exhibit 2, and is as follows:

- 21 1. The County will not take any action until EFSEC has reviewed and responded  
22 to the comments to the DEIS. The DEIS comment period closed on January  
23 20, 2004. Based on past experience with EFSEC review processes and  
24 informal discussions with EFSEC staff, it is estimated that it may take at least  
25 90 to 120 days for EFSEC and its independent consultant to develop  
26 preliminary responses to the comments on the DEIS. The final responses will  
27 not be provided until the issuance of the final EIS, which pursuant to EFSEC  
28 regulations and practice, will be after the EFSEC adjudicated hearing.

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2. When the County receives the responses, it will review them and determine on its own whether the EFSEC EIS response are adequate. The County estimates that the review time will be 7 to 21 days, but implies that it may be more depending on the amount of response information.
3. If the County, in its own discretion, determines that the DEIS and responses are not adequate, the County will refuse to proceed and refer the DEIS back to EFSEC demanding that EFSEC produce more information, essentially starting the process all over again.
4. If the County deems the DEIS and responses to be complete after their review, it will issue an administrative decision to accept the EFSEC DEIS with responses to comments starting a 10 working day appeal period regarding the DEIS.
5. If anyone appeals the adequacy of EFSEC's DEIS to the County, the BOCC will hear the appeal and the full file will be sent to the Planning Commission. This appeal process is estimated to take 45-60 days for the transmittal and review periods, plus 1-5 days for the appeal hearing.
6. Sometime after the hearing (time not referenced by County) the decision of the DEIS adequacy is rendered by the BOCC. If the BOCC determines, in its discretion, that EFSEC's DEIS is inadequate, the BOCC will refer the matter back to EFSEC demanding more information and the process starts all over again (i.e. above items 1-5).
7. If no one appeals the administrative finding by the County that EFSEC's DEIS is adequate, or if after appeal the BOCC finds that EFSEC's DEIS is adequate, the matter is then transmitted and reviewed by the Planning Commission and BOCC. This process is estimated by the County to take 30-45 days.
8. After the transmittal and review period, the Planning Commission would hold a 1 to 4 day hearing and some undefined time later renders its decision.

1           9. The Planning Commission then would transmit its decision to the BOCC for  
2           review, which the County estimates will take 30 days.

3           10. After review of the Planning Commissions record and decision, the BOCC will  
4           then hold its own 1 to 5 day hearing and some undefined time later issue its  
5           decision.

6           The County process, at its best, would take approximately 7 months after issuance of the  
7           DEIS and up to 10 months, assuming the upper end of the County time estimates. This  
8           also assumes the County continues to process the matter and does not unilaterally find  
9           that EFSEC's DEIS is inadequate, sending a request back to EFSEC and starting the  
10          whole process over again, in which event the County could stall the process indefinitely.  
11          This is a grave concern for the Applicant. If EFSEC delays commencing its legal  
12          proceeding until after a County decision, based even on the minimum time estimate of 7  
13          months, EFSEC virtually eliminates its ability to complete its review process in any timely  
14          fashion.

15  
16          At the DEIS Public Comment hearing in the evening of January 13, 2004, Mr. C. White  
17          of the Kittitas County Department of Community Development Services presented his  
18          comments to the EFSEC DEIS dated January 12, 2004. The comments had been  
19          prepared prior to the prehearing conference earlier that day. During the prehearing  
20          conference, Mr. White did not disclose the fact that responding to his comments would  
21          essentially require a major revision of the entire EFSEC DEIS. His statements, along  
22          with the County's proposed process and schedule clearly revealed that the County was  
23          not going forward with its process until the County makes its unilateral decision that the  
24          EFSEC DEIS and responses are adequate. In other words, if the County doesn't concur  
25          with EFSEC's responses, they will not proceed, thus the representations of time  
26          estimates were misleading. In effect, the County process would likely be dragged out  
27          much longer than even the 10-month estimate.

28

1 The County's comments on the EFSEC DEIS need to be analyzed along with the  
2 County's own DEIS prepared for the other proposed wind power project located near the  
3 Kittitas Valley Wind Power Project, the Desert Claim project. The County's comments  
4 are inconsistent with the content of their own DEIS including demands for additional  
5 information not contained in their own DEIS for the Desert Claim project. These  
6 inconsistent positions raise questions regarding the County's potential bias, especially in  
7 light of the County's demand to determine the adequacy of the EFSEC DEIS along with  
8 statements that the County will not proceed until they make such a determination. The  
9 County's position appears to be disingenuous, and the Applicant believes that the  
10 County will continually delay its review process by demanding more information from  
11 EFSEC. A summary of some of the County's inconsistent positions (vis-à-vis the  
12 EFSEC DEIS and the County's DEIS for the Desert Claim project) is attached as Exhibit  
13 3 and incorporated by reference as if fully set out.

14  
15 The County is attaching an environmental impact statement requirement to its  
16 procedure, which in addition to the fact that the County siting/permit process is  
17 duplicative, has resulted in further significant delay. This is unreasonable and unlawful  
18 because the County is exempt from the "detailed statement" required by RCW  
19 43.21C.030 pursuant to RCW 80.50.180 which provides: "Except for the actions of the  
20 Council under chapter 80.50 RCW, all proposals for legislation and other actions of any  
21 branch of government of the state, including ... counties, to the extent the legislation or  
22 other action involved approves, authorizes, permits, or establishes procedures solely for  
23 approving, authorizing or permitting, the location, financing or construction of any energy  
24 facility subject to certification under chapter 80.50 RCW, shall be exempt from a  
25 "detailed statement" required by RCW 43.21C.030". Thus the County statutorily is not  
26 required or allowed to complete an EIS for any of its actions related to an EFSEC  
27 project.

1 SEPA sets forth state environmental policy, including requirements for environmental  
2 impact statements and associated procedural requirements. SEPA potentially applies to  
3 most actions of state government, as well as actions of local government.

4  
5 The Department of Ecology was required by RCW 42.21C.110 to adopt statewide SEPA  
6 rules governing implementation of SEPA. By statute, the SEPA rules are to be accorded  
7 substantial deference, RCW 43.21C.095. Counties were required to adopt rules or  
8 ordinances consistent with the SEPA rules, RCW 43.21C.120(3). Both the statute and  
9 the SEPA rules contain numerous provisions designed to streamline the process and to  
10 avoid duplication.

11  
12 Kittitas County has developed procedures, which are contrary to State statute and  
13 contrary to the SEPA rules. These County procedures are not consistent with the  
14 interests of the State in adopting statewide environmental policies and procedures,  
15 which protect Washington's environment while avoiding unnecessary duplication of  
16 governmental processes. The Applicant wishes to highlight three areas where the  
17 County processes outlined in the "Possible timeline for processing the KV Wind Power  
18 project" (contained in Exhibit 2) are not consistent with state law. Those areas are: (1)  
19 the statutory exemption of RCW 80.50.180; (2) the "lead agency" requirements of the  
20 SEPA rules; and (3) the County SEPA appeal process.

21  
22 **(1) The exemption in RCW 80.50.180.**

23  
24 Professor Settle notes that "statutory exemptions immunize the specified activities from  
25 SEPA requirements regardless of their environmental significance." R. SETTLE, THE  
26 WASHINGTON STATE ENVIRONMENTAL POLICY ACT: A LEGAL AND POLICY  
27 ANALYSIS p. 12-6. RCW 80.50.180 specifically exempts actions of counties, which  
28 approve, authorize, or permit the location, financing or construction of energy facilities  
29 from the "detailed statement" requirements of SEPA. The detailed statement is required  
30 by RCW 43.21C.030 and gives rise to the threshold determination, scoping,

1 environmental impact statement, and comments to the environmental impact statement.  
2 Likewise, without any county requirement for a detailed statement, there is no  
3 requirement to adopt or approve a detailed statement adopted by another agency.  
4 Without the detailed statement requirement, none of these other procedural features is  
5 required.

6  
7 The clear intent of RCW 80.50.180 is to exempt any county approvals of energy facilities  
8 from SEPA compliance. Rather, SEPA compliance is to be undertaken by EFSEC. The  
9 “Possible timeline for processing the KV Wind Power project ” (contained in Exhibit 2)  
10 submitted by the County includes procedures and appeals for determining whether the  
11 EIS and/or a response document prepared by EFSEC is adequate for the County. With  
12 no County detailed statement requirement (because such a requirement is exempted by  
13 state law), there is simply no legal basis or authority for the County to determine whether  
14 a detailed statement is adequate. The County’s timeline is inconsistent with RCW  
15 80.50.180, and any requirement that an applicant (or EFSEC) comply with the described  
16 County process simply violates the statutory exemption.

17  
18 **(2) Lead Agency.**

19  
20 Professor Settle states: “A primary mission of the SEPA Rules is to minimize wasteful  
21 duplication of effort and gaps in compliance by assigning responsibility for SEPA  
22 compliance to the ‘lead agency’ and, within that agency, to its ‘responsible official’.” R.  
23 Settle *supra*, p. 10-1. The SEPA rules, in WAC 197-11-050(2), provide that the lead  
24 agency shall be the only agency responsible for the threshold determination and the  
25 preparation and content of environmental impact statements.

26  
27 WAC 197-11-938(1) states: “For all governmental actions relating to energy facilities for  
28 which certification is required under chapter 80.50 RCW, the lead agency shall be the  
29 energy facility site evaluation council (EFSEC) . . .” (The section goes on to provide that  
30 the lead agency for public projects shall, in some instances, be the project proponent.)

1  
2 In summary, then, the SEPA lead agency for private projects requiring certification under  
3 chapter 80.50 RCW is EFSEC; and EFSEC is the “only” agency responsible for the  
4 preparation and content of the environmental impact statement. The possible timeline  
5 submitted by the County, however, provides that the County will decide whether the EIS  
6 or associated response document is “adequate and defensible.” This duplicates an  
7 EFSEC responsibility and violates the lead agency rules, which reflect a “primary  
8 mission” to “minimize wasteful duplication of effort.” The County procedures violate the  
9 SEPA rules, as well as the legislative policy expressed in RCW 80.50.010(5) “to avoid  
10 costly duplication . . . ”

11  
12 **(3) Appeal Process.**

13  
14 In addition to providing that an entity other than the lead agency would determine the  
15 adequacy of a draft EIS, the County’s procedures violate the appeal restrictions of  
16 SEPA. The statute, RCW 43.21C.075, and the rules, WAC 197-11-680(3)(a), both limit  
17 the number of appeals (either administrative or judicial) that can be brought under  
18 SEPA. The rules expressly provide that an administrative appeal of the adequacy of a  
19 draft environmental impact statement is not allowed, WAC 197-11-680(3)(a)(ii).  
20 Likewise, appeal of other intermediate SEPA steps such as the adequacy of responses  
21 to comments is not allowed; administrative appeals are limited to review of the threshold  
22 determination and the final EIS. *See also, R. Settle, supra* pp. 19-6, 19-7.

23  
24 The County proposes that there can be an appeal of EFSEC’s response to comments or  
25 of the County staff’s determination in the County’s land use process. There is simply no  
26 legal authority for the County to undertake either the determination or an appeal. Both  
27 are directly contrary to limitations in the SEPA rules and the statute. The County  
28 process seems to allow a multiplicity of appeals in a manner clearly inconsistent with the  
29 interests of the State.

## Alternative Locations in County

The zoning ordinance for Kittitas County, KCC Chapter 17.61A does not allow wind farms as a permitted use anywhere in the County. The County chose, after considerable debate on the issue, to not go through a zoning process that would designate areas in which a wind farm would be permitted. The BOCC instead adopted a project-specific siting/permit process to consider proposed wind power projects on a case-by-case. This wind farm siting process is more complex and contains more regulatory hurdles than are required for siting a fossil-fuel fired power plant or pipeline in the County, as the Applicant pointed out in comments submitted to the BOCC in December 2002 and included with Exhibit 1. Pursuant to the ordinance, a wind farm may be authorized by the BOCC only through approval of a Wind Farm Resource Development Permit in conjunction with approval of a development agreement. While the process is far from clear, the Applicant believes that the BOCC would concurrently: 1) adopt a site-specific amendment to the Comprehensive Plan land use designation map to include a Wind Farm Resource Overlay District; 2) adopt a site specific rezone of the county zoning map to include a Wind Farm Resource Overlay Zoning District; 3) issue a Wind Farm Development Permit; and (4) negotiate and approve a development agreement.

Therefore there is no site or area in the County that an Applicant can identify that allows a wind farm as a permitted use. In other words, without going through the entire County permit/siting process for each individual proposed site, there is no zoning district or area where a wind farm can be sited. In essence, an Applicant is unable to find any place in the County in which a wind farm is permitted without submitting multiple applications through the County siting/permitting process.

However, an analysis of alternative sites in the County for the Kittitas Valley Wind Power Project was included in the in Chapter 2.7 of EFSEC DEIS, and Chapter 2.4.1 of the Kittitas County DEIS for the enXco Desert Claim Wind Power Project, which are referred hereto by reference and incorporated herein as if fully set out.

1  
2 The analysis in the EFSEC DEIS was the same used by Kittitas County for its DEIS for  
3 the proposed enXco Desert Claim wind farm site, being sited by Kittitas County pursuant  
4 to KCC 17.61A. These two DEIS's established criteria for the analysis of alternatives,  
5 and then reviewed potential sites in Kittitas County. The DEIS's concluded that although  
6 other sites for wind power generation may exist in Kittitas County, none would satisfy the  
7 test for availability or practicability for the Sagebrush Power Partners LLC proposal.

8  
9 As stated in the EFSEC Kittitas County Wind Power Project DEIS;

10  
11 *The following five key criteria for siting a wind power project were identified: (1) sufficient*  
12 *wind resource (the most important); (2) proximate/adequate transmission facilities; (3)*  
13 *large land area; (4) absence of significant environmental constraints; and (5) property*  
14 *owner interest. Each criterion is considered essential, and failure of a site with respect to*  
15 *any one criterion is considered to be a "fatal flaw" that would make a wind power facility*  
16 *unfeasible at that site*

17  
18 *(1) Sufficient wind resource. The most important criterion for siting a wind power facility*  
19 *is, of course, sufficient commercially viable wind. Sites that do not possess sufficient*  
20 *wind are not considered further by prospective developers, regardless of other*  
21 *characteristics. In Washington, sites with a minimum average wind speed of 13 to 17*  
22 *mph (Wind Classes 3-4) are desired to support a commercially viable wind energy*  
23 *facility. Given the current energy market conditions in the Northwest and the*  
24 *characteristics of current wind energy proposals, an average wind speed of 15 to 17*  
25 *mph appears to be the lower range of economic viability for a site. Sites with average*  
26 *speeds greater than 17 mph (Wind Classes 5 and above) are most desirable, but such*  
27 *sites in Washington are generally found in areas not conducive to wind power*  
28 *development, including mountain peaks and off-shore in the Pacific Ocean. Since the*  
29 *energy that can be derived for power generation from the wind is proportional to the*  
30 *cube of the wind speed, even a slight increase in wind results in a large increase in*

1 energy production; this also results in a reduction in the production cost of electricity  
2 (AWEA 2002a). Developers typically rely on published wind energy maps to initially  
3 identify regions or large areas with sufficient wind resources. They then conduct more  
4 detailed site-specific meteorological (and environmental) studies, typically over 1 to 2  
5 years. The Wind Energy Resource Atlas of the United States (U.S. Department of  
6 Energy 1986) identifies the Ellensburg corridor as having Class 3, 4 and 5 winds. (Also  
7 see [www.windpowermaps.org](http://www.windpowermaps.org)).

8  
9 (2) Proximity to existing transmission facilities with adequate capacity. Wind energy  
10 projects must connect to an electric transmission line to deliver power to the regional  
11 power system. The most important transmission-related factors considered by  
12 developers in project location decisions are the adequacy of existing transmission  
13 facilities (i.e., the availability of unused capacity on existing lines), and the distance from  
14 the project site to a transmission line. The need to either upgrade a regional  
15 transmission facility or to build an offsite project transmission line more than about 10  
16 miles (or less, depending upon the capacity of the project) to interconnect to an existing  
17 line can make a site financially infeasible. An interconnection agreement with the utility  
18 that owns the transmission line(s) is typically negotiated during development of the wind  
19 project and after the land is secured.

20  
21 Existing transmission facilities located in the northern portion of the Kittitas Valley are  
22 owned and operated by Bonneville (five 230 kV to 500 kV lines, and one 115 kV line)  
23 and PSE (one 230 kV line and one 115 kV line). Transmission lines at voltages below  
24 115 kV are not adequate for connection of wind energy projects generating over 100  
25 MW of electricity.

26  
27 (3) Large land area. Some of the factors that bear on the size of a site needed for wind  
28 energy facilities include the size of the project (in terms of power output and the size and  
29 number of turbines); separation between turbines to ensure safety and efficient  
30 operation; dispersed population; a prevalence of rural/agricultural activities (to minimize

1 *potential land use conflicts); sufficient setbacks from nearby residences, structures and*  
2 *public roads (to minimize potential environmental impacts); and large undivided parcels*  
3 *of land (greater than 100 acres). These criteria generally translate into project sites*  
4 *encompassing approximately 5,000 +/- acres of land for a 180 MW wind project.*  
5 *However, developers typically begin their search by investigating very large study areas*  
6 *covering many thousands of acres (e.g., 20,000-50,000 acres or larger), and gradually*  
7 *focus in on a more defined area. In practice, a developer may be actively and*  
8 *simultaneously considering, and applying the criteria to, several potential sites within the*  
9 *larger area.*

10  
11 *(4) Absence of significant environmental constraints. Wind energy developers try to*  
12 *avoid sites with significant environmental constraints. The presence of constrained areas*  
13 *can increase construction costs and make permitting more complex, time consuming,*  
14 *and uncertain. At the level of determining general site suitability and feasibility studies,*  
15 *characteristics taken into account include the presence of parks or designated*  
16 *recreational lands, wildlife refuges, prevalent wetlands and/or sensitive habitat/species,*  
17 *significant cultural and archaeological resources, and conflicting land uses. Qualified*  
18 *developer personnel and consultants identify these resources through research of*  
19 *published sources, onsite investigations, and discussions with resource agency staff.*

20  
21 *(5) Property owner interest/property availability. Wind energy facilities are typically*  
22 *constructed on lands leased from property owners. As a practical matter, property owner*  
23 *support, responsiveness and willingness to enter into long-term leases are essential*  
24 *preconditions to gaining the ability to propose a wind facility on a particular site. As to a*  
25 *particular private applicant, a site that is not actually available for use would not meet*  
26 *that proposal's objectives and would not, therefore, be a real or "reasonable alternative"*  
27 *(as to that applicant.)*

28  
29 The criteria identified above were applied to areas/sites within the Kittitas Valley. Four  
30 broad geographic areas were defined for investigation: west of US 97, east of US 97,

1 Whiskey Dick Mountain, and south of Whiskey Dick/Boylston Mountains. These areas  
2 coincide with those identified in published information (e.g., the U.S. Department of  
3 Energy's *Wind Energy Resource Atlas*) as having potentially viable wind resources.  
4 These areas were explored by both enXco and Sagebrush Power Partners LLC to  
5 identify the sites of their respective proposals. The area east of US 97 generally satisfied  
6 all suitability criteria for wind energy development. Both enXco and Sagebrush Power  
7 Partners LLC identified respective sites (or portions of sites) within this area, and  
8 developed wind power proposals based on those sites. Based upon the five agreed  
9 criteria, alternatives were considered in both the enXco Desert Claim DEIS and KV  
10 DEIS. The alternatives were found to be unacceptable.

### 11 12 13 **Interests of The State**

14  
15 Preemption of the Kittitas County land use ordinances will further the interests of the  
16 State of Washington. Several overriding state concerns are involved. Most of these are  
17 referenced in RCW 80.50.010. They include the provision of abundant energy at  
18 reasonable cost, with minimal adverse effects on the environment—a combination of  
19 policies that is leading the state to favor “green” energy sources such as wind power. It  
20 is important to note that the above policies are statewide policies that cannot necessarily  
21 be addressed solely by reference to “the best interests of the surrounding neighborhood  
22 or the county as a whole” (Kittitas County Code 17.61A.040A)

23  
24 The interests of the State to be considered and balanced, which are delineated in RCW  
25 80.50.010 will be met by preemption. RCW 80.50.010 provides:

26 Legislative finding--Policy--Intent.

27 The legislature finds that the present and predicted growth in energy demands in  
28 the state of Washington requires the development of a procedure for the

1 selection and utilization of sites for energy facilities and the identification of a  
2 state position with respect to each proposed site. The legislature recognizes that  
3 the selection of sites will have a significant impact upon the welfare of the  
4 population, the location and growth of industry and the use of the natural  
5 resources of the state.

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

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

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

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

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

22 (4) To avoid costs of complete site restoration and demolition of improvements  
23 and infrastructure at unfinished nuclear energy sites, and to use unfinished  
24 nuclear energy facilities for public uses, including economic development,  
25 under the regulatory and management control of local governments and port  
26 districts.

27 (5) To avoid costly duplication in the siting process and ensure that decisions  
28 are made timely and without unnecessary delay  
29  
30

1 **The Kittitas Valley Wind Power Project Will Help Meet Future Regional Demand for**  
2 **Abundant Energy at Reasonable Cost**

3  
4 Sections 1.2 and 3.5 of the EFSEC Kittitas Valley Wind Power Project DEIS, which are  
5 incorporated herein as if fully set out, describe the purpose and need for the Kittitas  
6 Valley Wind Power Project and electrical energy demand in the region. In part Section  
7 1.2 states:

8  
9 *The purpose of the KVVPP is to construct and operate a new electrical generation*  
10 *resource using wind energy that will meet a portion of the projected growing regional*  
11 *demands for electricity produced from non-renewable and renewable resources. In the*  
12 *Pacific Northwest Electric Power Planning and Conservation Act, Congress established*  
13 *that development of renewable resources should be encouraged in the Pacific Northwest*  
14 *(16 United States Code [USC] Section 839[1][B]). The Act defines wind power as a*  
15 *renewable resource (Section 839a[16]).*

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

21  
22 *The Western Electricity Coordinating Council (WECC) forecasts electricity demand in the*  
23 *western United States. According to WECC's most recent coordination plan, the 2001-*  
24 *2011 summer peak demand requirement is predicted to increase at a compound rate of*  
25 *2.5% per year (WECC 2002).*

26  
27 *Based on data published by the Northwest Power and Conservation Council (NWPPCC),*  
28 *electricity demand for the NWPPCC's four-state Pacific Northwest planning region*  
29 *(Washington, Oregon, Idaho, and Montana) was 20,080 average MW in 2000 (NWPPCC*  
30 *2003).*

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

10  
11 Section 2.1 points out that there is a growing market for electricity powered by "green  
12 resources" in the Pacific Northwest. As a result of RCW 19.29A signed into law in 2001,  
13 sixteen of Washington's electric utilities were directed to offer a voluntary alternative  
14 energy product (essentially an electricity product powered by green resources) starting  
15 in January 2002. Local and regional markets for green power have been increasing.  
16 Several regional electric utilities have recently issued requests for proposals (RFPs) to  
17 acquire wind power, including Puget Sound Energy, Pacific Power, Avista Corporation,  
18 and Portland General Electric.

19  
20 The energy crisis of 2001 and the volatility of the price of natural gas have also created  
21 increased demand for wind power to meet the region's future power needs. Wind power  
22 offers utilities more predictability regarding their future energy costs, because once a  
23 wind farm is constructed, there are no fuel costs and very little maintenance costs. Wind  
24 power developers, unlike developers of natural gas plants, routinely offer utility  
25 customers long-term (i.e. 20 years) fixed-price contracts. Increasing customer demand  
26 for green energy, the environmental attributes of wind power, and its fixed price have led  
27 the region's utilities to include significant percentages of wind power in their latest  
28 integrated resource plans.  
29

1 As demand for wind energy has been increasing in the region, it needs to be noted that  
2 wind resources in the state of Washington are finite and limited. As stated in Section  
3 3.5-6 of the EFSEC Kittitas Valley Wind Power Project DEIS; ...”Estimates of the wind  
4 resource ...are expressed in wind power classes ranging from Class 1 to Class 7, with  
5 each class representing a range of mean wind power density or equivalent mean speed  
6 at specified heights above the ground. Areas designated Class 4 or greater are suitable  
7 with advanced wind turbine technology under development today.” It further states that  
8 the state of Washington compared to other states, is “ranked in the bottom tier in terms  
9 of wind energy potential.” The most recent study available identified 1,900 aMW of wind  
10 energy potential in Washington looking only at the windiest and most developable  
11 locations (Tellus Institute 2002).

12  
13 The EFSEC Kittitas Valley Wind Power project DEIS also stated in Section 3.5 that the  
14 Ellensburg corridor in central Washington, where the KVVPP and two other wind power  
15 projects are proposed, sustains one of the strongest wind energy resources in the state.  
16 Data from several sites throughout the central Washington corridor indicate that exposed  
17 areas have a Class 4 to 5 annual average wind resource with a Class 6 resource during  
18 the spring and summer seasons. Wind resources of this class near transmission lines  
19 and load centers (such as the Kittitas Valley Wind Power Project site) are finite and are  
20 critical to meeting regional energy needs with abundant energy at reasonable cost.

### 21 22 **Operational Safeguards**

23  
24 There are no specific operational safeguards for wind energy power projects in the  
25 nature of federal operational safeguards for nuclear power plants, as wind power  
26 projects are inherently safer than thermal power projects. With a wind power project,  
27 there is no fuel to transport, leak, explode or leach into the ground, and there are no  
28 discharges to the environment to control. However, the general safeguards related to  
29 health and safety are outlined and described in detail in Chapter 3.4 of the EFSEC  
30 Kittitas Valley Power Project Draft EIS, and Sections 2.9, 4.1, and 7.2 of the Kittitas

1 Valley Wind Power Project Application for Site Certification, which are incorporated by  
2 reference herein as if fully set out. These sections list the main laws, ordinances,  
3 regulations, and standards designed to protect human health and safety that would be  
4 reflected in the design, construction, and operation of the project, and describe existing  
5 health and safety hazards at the project site and identify potential health and safety risks  
6 from project construction and operation mitigation measures are identified for potential  
7 impacts. The operational safeguards described are more than technically sufficient to  
8 protect the welfare of the citizens of the State of Washington.

### 9 10 **Quality of the Environment**

11  
12 EFSEC is to consider preserving and protecting the quality of the environment in  
13 balance with the other items listed in 80.50.010. There has been exhaustive study and  
14 analysis regarding environmental impact and mitigation related to this Project. This  
15 analysis is set out in the Kittitas Valley Power Project Application for Site Certification  
16 and Chapters 1.8, 1.9, 1.10 and 3 of the EFSEC Kittitas Valley Wind Power Project  
17 DEIS, which are referred hereto and incorporated by reference as if fully set out.  
18 Potential environmental impacts from the proposed action and the No Action Alternative  
19 are described in Chapter 3 of this EIS. Types of measures to avoid or reduce adverse  
20 environmental impacts resulting from the project presented in the DEIS include: (1)  
21 measures inherent in project design; (2) best management practices (BMPs)  
22 incorporated into construction and operation; and (3) mitigation measures either  
23 proposed by the Applicant or additional mitigation measures recommended in the DEIS.  
24 This environmental analysis addresses the direct, indirect, and cumulative impacts for  
25 the proposed action. The analysis concludes that the project will not produce significant  
26 impacts upon quality of the environment except for the highly subjective matter of visual  
27 impact. The potentially adverse effect of this visual impact is balanced by the otherwise  
28 minimal impacts associated with this form of energy production, especially when  
29 compared with alternative means of generation.

1 The Applicant will provide enhanced recreational opportunities by developing  
2 informational facilities for viewing and to explain the operation of the wind farm. Wind  
3 power does not require non-renewable fuels or the use of water that is required by other  
4 forms of energy production, and does not discharge pollution into the air or waters of the  
5 state. This form of energy by its very nature enhances the public's opportunity to enjoy  
6 the recreational benefits of air and water. Further the use of the land as a wind farm will  
7 help retain the agricultural rural nature of the area, and avoid degradation caused by  
8 subdivision. The Applicant also proposes to protect and restore wildlife habitat on an  
9 approximately 550 acre area located within the project boundaries. The amount of  
10 habitat to be restored and protected in this approximate 550 acre area, significantly  
11 exceeds the amount of habitat mitigation required from the construction and operation  
12 Kittitas Valley Wind Power Project according to the Washington Department of Fish and  
13 Wildlife 2003 Wind Power Siting Guidelines. Thus the Applicant will create a net habitat  
14 enhancement.

15  
16 **The Project Will Promote Air Cleanliness and Beneficial Changes in the**  
17 **Environment**

18  
19 Chapter 3.2 of the Kittitas Valley Wind Power Project Application for Site Certification  
20 describes the Project's contribution to air cleanliness and beneficial changes to the  
21 environment and is referred hereto and incorporated by reference as if fully set out.  
22

23 The fuel source for the Project is wind that is transformed from kinetic energy into  
24 electrical energy by wind turbine generators. No air emissions will be generated from  
25 operation of the wind turbine generators at the Project. The operation of the Project will  
26 have no effect on the climate (visible plumes, fogging, misting, icing, or impairment of  
27 visibility, and changes in ambient levels caused by emitted pollutants). There are no  
28 emissions from the operation of the project, and thus none to be regulated.  
29

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

10  
11 The project will also allow the owners of the properties upon which the wind farm is  
12 located to economically continue their preset use that is primarily agriculture in nature  
13 and avoid environmental degradation caused by subdivision and dense development.

#### 14 **Timeliness and Duplication**

15  
16  
17 Highly important to the State is a policy that governmental decisions regarding energy  
18 facilities are made quickly, without costly duplication. This policy is contained in RCW  
19 80.50.010(5), and in the requirement of RCW 80.50.100 that the Council submit its  
20 recommendation to the governor within one year of receiving an application. RCW  
21 80.50.010(5) was adopted by the Legislature in 2001 in the middle of a regional energy  
22 crisis. This is the latest amendment to the EFSEC statute and is the latest  
23 pronouncement of the legislature's concerns and direction. Policies to avoid duplication  
24 are also inherent in many features of SEPA and the SEPA rules. These include  
25 requirements that there be a single environmental impact statement, prepared by the  
26 lead agency, that appeals be limited, and that appeals of intermediate SEPA compliance  
27 steps are prohibited. Energy facilities are expensive, and must be licensed to meet  
28 changing market conditions and costs. State policies therefore favor predictable,  
29 nonduplicative and relatively quick licensing procedures.

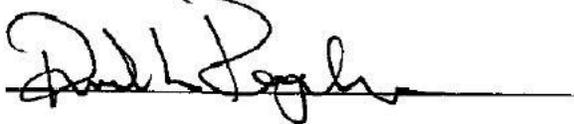
1 Kittitas County has shown little or no interest in meeting these state policies. It has  
2 created largely duplicative licensing and SEPA compliance processes. The County has  
3 been unable to state precisely either what is required or how long its review process will  
4 take. The County has created a new licensing process and clearly is still in the process  
5 of deciding for itself what procedures will be followed. The County has declined to meet  
6 further with EFSEC and the Applicant to lend certainty to its requirements.

7  
8 The Applicant expects that EFSEC will consider legitimate local concerns during its  
9 adjudicative hearing on the Application for Site Certification. It is impossible, however,  
10 for EFSEC, or for the Applicant, to respond to constantly changing requirements and  
11 timelines, which do not appear to be consistent with applicable statutes. The State must  
12 allow a process, which provides abundant energy at reasonable cost through a timely,  
13 definite, and non-duplicative licensing process. Kittitas County requirements, which fail  
14 to address, or which unreasonably hamper these overriding state concerns, should be  
15 preempted.

16  
17 **Conclusion**

18 By the foregoing the Applicant has addressed the requirements as set forth in WAC 463-  
19 28-040 and demonstrated that preemption should be granted. The Applicant believes  
20 that the adjudicative hearing on the preemption required by WAC 463-28-060 should  
21 occur in conjunction with the main adjudicative hearing. WAC 463-28-060 requires a  
22 consideration of the factors listed WAC 463-28-040, which may require a full  
23 consideration of all the policies of RCW80.50.010 as they apply to this Application for  
24 Site Certification.

25 Dated this 7<sup>th</sup> day of February, 2004

26  
27   
28

29  
30  
31 Darrel L. Peeples  
32 Attorney for Applicant

## Exhibit 1

## **Chronology of Kittitas County Approach to Wind Farm Development**

### Purpose:

This is a summary of communications between representatives of Sagebrush Power Partners, LLC and parent company Zilkha Renewable Energy (Applicant) and representatives of Kittitas County regarding Applicant's efforts to obtain local land use consistency for the Kittitas Valley Wind Power Project (ASC # 2003-1) pursuant to WAC 463-28-030. Representatives of Applicant referenced in this document include Chris Taylor and Jennifer Diaz of Zilkha Renewable Energy and Darrel Peeples and Tim McMahan, attorneys representing Applicant. Representatives of Kittitas County referenced in this document include Clay White and Dave Taylor of the County Planning Department, Jim Hurson, Chief Civil Deputy Prosecuting Attorney, and County Commissioners Bruce Coe, Max Golladay and Perry Huston. In addition to the narrative summary, copies of correspondence (both electronic and hard copy) have been included. This summary begins with a very brief review of the policy decisions taken by Kittitas County regarding the permitting of wind farms prior to Applicant's filing of an application for site certification with EFSEC.

### Chronology:

#### ***April 2001***

04/23/01 Planning Commission hearing to consider public testimony on amendments to Kittitas County's Utility Ordinance addressing siting of "major alternative energy facilities" (Chapter 17.61 of the County Zoning Code).

- After a discussion of aesthetics, public process, and wind farm placement and size the commissioners decide to continue the discussion on 5/21/01.

#### ***May 2001***

05/21/01 Planning Commission public hearing continues from 4/23/01.

- Planning Commissioner Jack Miller recommended referral of Utility Ordinance back to the Planning Commission staff with new height language, UGA area incorporation, and zoning recommendations incorporated into the Ordinance.

#### ***August 2001***

08/07/01 BOCC unanimously approve Ordinance 2001-12, Amendment to Chapter 17.61 of the Kittitas County Code – Zoning Text Amendment – TA-01-02 – Utility Ordinance which allows major alternative energy facilities (including commercial-scale wind farms) as a conditional use in areas zoned Ag-20, Forest and Range, Commercial Agriculture or Commercial Forestry.

- No public testimony voicing opposition was given, despite published legal notice and front-page coverage in the Ellensburg *Daily Record*.

### ***June 2002***

06/24/02 Steve Lathrop docketed a request with the Planning Department to “place a moratorium on the siting of commercial wind machines within Kittitas County pending review and designation of wind resource lands within the County as part of this year’s comprehensive plan review process”.

- Proposal was filed after the June 30<sup>th</sup> amendment deadline pursuant to Title 15B of the Kittitas County Code.

### ***July 2002***

07/10/02 In a letter dated 7/10/02 the BOCC decided against placing Lathrop’s request on the agenda for further discussion.

- Letter stated “Historically, Kittitas County has not utilized the moratorium process as a tool to regulate development. Instead, the County attempts to be *proactive* by adopting zoning controls as new potential land uses are identified”.

07/30/02 BOCC voted 2-1 to take no action on placing a wind farm moratorium in Kittitas County as proposed by Steve Lathrop.

### ***August 2002***

08/22/02 Planning Commission hearing to consider Lathrop’s proposal to amend the County’s Comprehensive plan prohibiting all commercial wind projects in the entire county.

- Public testimony was taken and scheduled to continue 8/26/02.

08/26/02 Planning Commission hearing continued regarding Comprehensive Plan amendments submitted by Steve Lathrop banning wind power projects.

- Commissioners vote 4-1 to pass forward to the BOCC a recommendation of approval of Lathrop's Comprehensive Plan Amendment that specifies a 6-month moratorium on wind farm development during which time the Planning Commission would consider siting criteria for wind projects.

### *September 2002*

- 09/09/02 BOCC hearing to discuss legal notice errors involving the County's adoption of the revised utilities ordinance and how it affects the siting process for wind farms in the county.
- Legal notice published 9/3/02. 60 day appeal process began from that date.
  - BOCC unanimously decided to let the utilities ordinance stand and not to adopt a moratorium.
  - Planning Director Dave Taylor stated: "If the County starts withdrawing policy changes just because someone threatens to appeal them it will lead to a very unpredictable climate, I can't advocate that".
- 09/26/02 The 2001 amendment to the county code related to wind farms was appealed by Residents Opposed to Kittitas Turbines (ROKT) to the Eastern Washington Growth Management Hearing Board.

### *October 2002*

- 10/16/02 BOCC held a public hearing to consider a possible wind farm moratorium and development criteria for wind farms.
- 5 hours of public testimony.
  - Commissioners vote to continue the hearing to decide if county zoning rules are adequate to handle wind farm proposals or if a 6 month moratorium is need to develop siting standards.
- 10/26/02 BOCC continued public hearing from 10/16/02 and unanimously adopted a 60 day moratorium on wind farm development.
- Final approval of wind farm projects to be made by BOCC instead of the Board of Adjustment.
  - BOCC approved an amendment to the county utilities ordinance (KCC 17.61A) that requires a wind resource overlay zone, a comprehensive plan amendment a development agreement and a development permit before a wind power project can be developed.

- Proposed permit conditions to be addressed on a project-by-project basis with site specific evaluations.
- BOCC orders Planning Commission to hold a public hearing before Nov. 26, 2002, to consider possible revisions to regulations related to wind farms.

### *November 2002*

11/20/02

Applicant (C. Taylor) submits written comments to Kittitas BOCC regarding the proposed amendments to Chapter 17.61 (Attachment 01). Key points included:

- The proposed permitting process for major wind energy developments would require applicants to navigate several procedural hurdles rather than a single Condition Use Permit (CUP) process, as under the current utilities ordinance.
- The proposal to require a development agreement, comprehensive plan amendment, rezone, and a development permit to site a wind farm is far more onerous than the requirements to site a thermal power plant, mining operation, or many other types of facilities that would have far greater impacts on surrounding land uses. The proposed process, by its very complexity, would also greatly increase the potential for delay and legal challenges by opponents of such facilities. Such delay and litigation would not service the interests of the County, wind energy developers or the public.
- Adoption of the proposed ordinance would make the process for permitting a wind farm in Kittitas County unnecessarily complex.

### *December 2002*

12/03/02

BOCC adopts new wind farm development rules. New rules (KCC 17.61 A) are patterned after the process used to site and permit the Mountain Star master planned resort. This process requires four separate elements: 1) A development agreement, 2) A site-specific rezone to Wind Resource Overlay Zone, 3) A sub-area comprehensive plan amendment, and 4) A development permit.

- Commissioner Huston states, “The process can now begin if there is an application...I think it’s a good process we have adopted, so there is no reason for the moratorium”.
- Planning Commissioners expressed disappointment that they were “not allowed to do their job” and develop criteria for the wind farm ordinance.

## *January 2003*

01/13/03 Applicant filed ASC #2003-1 for the Kittitas Valley Wind Power Project with EFSEC at regular Council meeting in Olympia.

01/14/03 Chris Taylor and Darrel Peoples met individually with Kittitas County Commissioners to inform them of Applicant's submittal of ASC to EFSEC.

Commissioner meetings were brief and related mainly to EFSEC process. Two Commissioners indicated they hoped the EFSEC process would be "better than what the County experienced during the Olympic Pipeline siting process."

Applicant later met with Jim Hurson to inform him of the same. During meeting with Mr. Hurson, he noted that the County had a "negative experience" with EFSEC during the Olympic Pipeline siting process and this had left the County with a negative impression of the agency. County concerns, according to Mr. Hurson, included lack of local EFSEC hearings and non-responsiveness on the part of the pipeline applicant. Mr. Hurson stated that decision to go to EFSEC might be viewed very negatively by County Commissioners and that "my client may instruct me to obstruct the whole process."

Applicant would encourage EFSEC to hold as many hearings as possible in Kittitas County. Applicant representatives also suggested to Mr. Hurson that they would like to meet with County representatives as soon as possible to discuss the local land use consistency issue and any mitigation measures the County felt were necessary.

01/15/03 Chris Taylor and Darrel Peoples met with Planning Director Dave Taylor to inform him of EFSEC application.

Meeting was brief and general in nature. Mr. D. Taylor indicated County would need to determine how its land use process would integrate with the EFSEC process.

01/22/03 Applicant attempted to arrange meetings with both BOCC and Planning Department to discuss details of local land use process. Dave Taylor of the Planning Department indicated he "could not" meet with Applicant to discuss the matter until after he had discussed the matter with the BOCC (Attachment 02). The BOCC indicated they did not want to meet to discuss the matter until they had consulted with County attorney.

## *February 2003*

- 02/03/03 BOCC and Planning Department held a Study Session during which the issue of EFSEC process and local land use consistency was discussed (Attachment 03). Mr. Hurson explained to the BOCC that he had drafted a letter to be sent to the Applicant outlining the County's position on the ASC filed with EFSEC and the process the County wished the Applicant to follow to obtain local land use consistency.
- 02/05/03 Mr. Hurson sent a letter to Applicant's attorney, Mr. Peeples outlining the County's position regarding the need for Applicant to apply for a rezone, comprehensive plan amendment and development agreement (Attachment 04). In the letter, Mr. Hurson stated that going through the process outlined in KCC 17.61A (copy of KCC chapter 17.61A attached) was the only way for the Applicant to obtain local land use consistency. Mr. Hurson went on to assert that "whether and to what extent preemption of local land use regulation is allowed is still a matter of debate."
- 02/06/03 Telephone call between Mr. Peeples and Mr. Hurson Mr. Peeples and Mr. Hurson generally discussed the County and EFSEC process and the possibility of a joint hearing process with EFSEC. Mr. Peeples expressed concern regarding the fact that both processes were similar in that they were both siting processes for specific projects. Mr. Peeples stated that the county process was not a traditional zoning process, that he was worried about duplication, and wanted to discuss and develop a process that would avoid the duplication. Mr. Peeples stated that a text amendment, possibly along the lines of that adopted by Walla Walla County for the Wallula Generating Project (a project recently reviewed and approved by EFSEC) or a joint hearing process might avoid the duplication. However both he and Mr. Hurson expressed concerns regarding a joint hearing process. Mr. Peeples asked for clarification and the details of the county process including potential schedule. Mr. Hurson stated that the process was unclear and not fully developed, and that he didn't know. Mr. Hurson expressed a lack of interest in any process other than the contained in KCC 17.61A. Mr. Peeples acknowledged that he understood the County's preference, but hoped something could be worked out that met all the parties' needs (i.e. Kittitas County, EFSEC and the Applicant). Mr. Peeples expressed a desire to meet with the County and EFSEC to work out a reasonable process and suggested further open minded discussion.
- 02/07/03 Applicant (C. Taylor) met with Commissioner Perry Huston to discuss the letter from Mr. Hurson, County process for appointing an EFSEC representative from the County, and Commissioner Huston's interpretation of the process required of Applicant to obtain local land use consistency.

- Comm. Huston stated that the BOCC intended to appoint a staff person or community member (but not a BOCC member) to EFSEC Council at the 2/18/03 BOCC meeting or shortly thereafter.
- Comm. Huston then outlined his view of how the local land use review would proceed. He explained that the rezone, comprehensive plan amendment and development agreement would all be processed concurrently. He indicated all three would be decided at a single BOCC meeting. The Planning Commission would perform the bulk of the preliminary work and scoping.
- Comm. Huston stated that he agreed with Applicant that the County did not need to duplicate the SEPA EIS review that was already underway by EFSEC.
- Comm. Huston stated that drafting of the development agreement could begin as soon as an application was filed by the Applicant. He stated this was “the heart and soul of the process.”
- In response to a question from Mr. C. Taylor re: the types of mitigations the BOCC might want to address in the local land use process, Comm. Huston mentioned tower heights and setbacks and stated that he believed the County would likely leave the issues of mitigation for environmental impacts to EFSEC’s SEPA review.
- Mr. C. Taylor proposed that an alternative the County might consider would be to adopt a text amendment, possibly along the lines of that adopted by Walla Walla County for the Wallula Generating Project. Comm. Huston stated that he was not inclined to pursue this option because such an amendment would, of necessity, be general in nature rather than tailored to the specific issues raised by the Applicant’s proposed Project. He also noted a concern that such a legislative action would not fall under the EFSEC expedited appeals process, whereas a rezone and comprehensive plan amendment, as quasi-judicial actions, would be covered under the EFSEC appeals process. He stated that having any appeals of local decisions related to the Applicant’s Project be covered by the EFSEC appeals process was probably preferable from the County’s perspective.
- Comm. Huston also stated that any conditions the County felt were necessary to impose on the Project, if approved, would be contained in the development agreement, rather than the rezone or comprehensive plan amendment.

02/10/03

Mr. Hurson sent an email to Mr. Peeples referencing his letter of 2/5/03 and urging Applicant to submit an application to the County as soon as possible (Attachment 05). Mr. Hurson stated in the email that he could not provide any assurance as to how long the County’s land use decision process might take.

- 02/11/03 Mr. Peeples sent an email in response to Mr. Hurson's email of 2/10/03 (Attachment 06). Mr. Peeples mentioned the option of pursuing a text amendment with the County (rather than going through the process outlined in KCC 17.61 A) and noted his concerns regarding the potential duplication of hearing processes between EFSEC and the County and the potential for lengthy delays that this could cause. Mr. Peeples stated his view that under the EFSEC statutes, the County's land use consistency role within the EFSEC process was primarily related to traditional zoning rather than a project-specific siting process. Mr. Peeples further stated that the County's proposal for the Applicant to go through the process outlined in KCC 17.61A did not satisfy the Applicant's concerns regarding potential duplication of siting processes and hearings and uncertainty regarding timeline. Mr. Peeples reiterated his willingness to discuss all reasonable proposals for resolving the local land use consistency issues. He suggested a meeting with representatives of the County, EFSEC, and Applicant to discuss potential approaches to resolving the local land use consistency issue.
- 02/14/03 Mr. Hurson sent an email in response to Mr. Peeples email of 2/11/03 (Attachment 07). Mr. Hurson said he believed he had made his position clear already. He stated that if the Applicant "wants to further delay the progress on their project, that's their choice." He stated that he and Mr. D. Taylor would likely be available the week of 2/24/03 to meet with Applicant representative Mr. C. Taylor. He stated that he believed, "for appearance of fairness and for restrictions related to *ex parte* contact, no EFSEC representatives can or should be present."
- 02/16/03 Mr. Peeples sent an email in response to Mr. Hurson's email of 2/14/03 (Attachment 08). Mr. Peeples stated that he would be out of the country until March 19 but that Mr. C. Taylor would contact Mr. D. Taylor to arrange a meeting for the week of 2/24/03. He stated that he did not believe there was any appearance of fairness or *ex parte* issue regarding participation of EFSEC staff in such a meeting between the County and the Applicant, but rather that such participation might be beneficial.
- 02/19/03 Mr. C. Taylor sent a letter to Mr. Perry Huston thanking him for meeting with him on 2/7/03 and for his input regarding the County's desire for the local land use review to be conducted pursuant to KCC 17.61A (Attachment 09). Mr. Taylor reiterated his concerns regarding a) potential duplication of hearings and process between EFSEC and the County and b) the fact that no County representative had yet offered any firm timeline for the County's review process. Mr. C. Taylor reiterated the Applicant's desire to work cooperatively with the County to resolve the land use consistency issue and proposed a meeting with County, Applicant and EFSEC representatives the week of 2/24/03.

- 02/19/03 Applicant arranged a meeting with Mr. D. Taylor and Mr. White of County Planning Department and notified Mr. Hurson that he and/or any member of the BOCC were invited to attend.
- 02/25/03 Meeting at County Planning Department with Mr. C. Taylor, Mr. D. Taylor, Mr. White and Mr. Hurson to discuss process and schedule for local land use consistency.
- Meeting topics included: Building permits, use of County roads and rights-of-way, decommissioning assurance, and septic and well permits (see Meeting Summary, Attachment 10)
  - Regarding local land use consistency, Mr. C. Taylor asked how the County proposed to avoid possible duplication of SEPA process between EFSEC and County reviews.
  - Mr. D. Taylor responded that County should serve as SEPA lead agency and that EFSEC could then adopt the County's SEPA document. He stated that because EFSEC's process does not call for finalizing a SEPA document until the end of the adjudicated hearings process, the County would not have a SEPA document available at the time of its land use review upon which to base its decision. He said for this reason the County would need its own SEPA document.
  - Mr. D. Taylor and Mr. Hurson stated the County was not convinced that either the enXco or Zilkha projects would require an EIS under SEPA, that one or both might be addressed via a Determination of Non-Significance (DNS) or Mitigated Determination of Significance (MDNS).
  - Mr. C. Taylor responded that EFSEC had already accepted lead agency status under SEPA and issued a Determination of Significance (DS) for the Kittitas Valley Wind Power Project.
  - Mr. D. Taylor said it was possible the County could issue a DNS or MDNS even if EFSEC issued a DS for the same Project. He noted his view that the County could not delegate its substantive SEPA review authority to EFSEC.
  - Mr. C. Taylor referenced RCW 80.50.180 which exempts local government from SEPA for decisions directly related to EFSEC review of a project. Mr. D. Taylor and Mr. J. Hurson stated they would review the statute but that it was adopted in 1977 and therefore might be superceded by the Growth Management Act (GMA.) Mr. C. Taylor suggested that getting EFSEC input and involvement on this point would be helpful.
  - Re. timeline for County review, Mr. D. Taylor stated that typical re-zone requests are processed within 60 days, but given the complexity of this proposal, it might take up to 6 months to complete. He stated that if the Applicant filed an application right away, he felt it was realistic to complete the review by July '03 in keeping with the proposed EFSEC schedule.

- Mr. Hurson stressed that the County felt nothing further could be done until an application was filed with the County by the Applicant.
- Mr. C. Taylor responded that the main reason no application had yet been filed was that the Applicant wanted to have clarity regarding process and timeline for the County's review before submitting any application. He stated that the key issues for the Applicant were:
  - a) what the steps and timeline would be for the County review,
  - b) concurrence from EFSEC that whatever process the County proposed would be adequate and appropriate for ESFEC's purposes, and
  - c) approximate costs of the County's review of the land use application.
- Mr. C. Taylor asked if the County had any other possible approaches to suggest for resolving local land use consistency. The County representatives did not propose any alternatives. Mr. C. Taylor then asked about a possible text amendment, and provided a copy of the text amendment adopted by Walla Walla County for the Wallula Generating Project recently reviewed by EFSEC.
- Mr. Hurson said he was aware of this option and would review the Walla Walla text amendment.
- Mr. C. Taylor suggested a follow up meeting within the next week that included ESFEC staff to ensure that all three parties agreed on an approach for resolving local land use consistency.

02/26/03 Mr. C. Taylor sent an email thanking the County representatives for meeting with him and proposing a meeting on 3/6/03 with County, Applicant and EFSEC staff to reach consensus on process for local land use consistency (Attachment 11). He also indicated he would draft a summary of the 2/25/03 meeting and forward it to all meeting participants.

02/27/03 Mr. Hurson sent an email in response to Mr. Taylor's email of 2/26/03 encouraging Applicant to submit an application to the County and rejecting the suggestion of a meeting with EFSEC staff on 3/6/03 on the grounds that it was "premature" because the County had not yet received a land use application (Attachment 12).

***March 2003:***

03/03/03 Mr. C. Taylor sent an email and forwarded an electronic copy of a meeting summary to Mr. White, Mr. D. Taylor and Mr. Hurson (Attachment 13). Mr. C. Taylor reiterated Applicant's eagerness to move forward with the local land use process. He also restated Applicant's position that it was vital to have a clear mutual understanding with the County, Applicant and EFSEC regarding the County's process, timeline and interface with the EFSEC project review process before submitting a land use application to the County. Mr. C. Taylor emphasized that involving EFSEC upfront was

important given that the County had suggested several SEPA review scenarios that might have significant impacts on EFSEC's SEPA review process that was already underway. He reiterated the Applicant's flexibility to discuss and consider any reasonable process for local land use review. He again proposed a meeting on 3/6/03 with County, EFSEC and Applicant representatives, stating he felt one joint meeting of the three parties to discuss this issue was not unreasonable, given the importance of reaching consensus among all parties.

03/04/03 Mr. Hurson sent an email in response to Mr. Taylor's email of 3/3/03 stating that he did not feel the meeting summary was complete or accurate (Attachment 14). He noted several examples of comments made by County representatives and Mr. C. Taylor that were not directly referenced in the summary. Mr. Hurson stated that the County did not know how the County's SEPA review would be coordinated with the EFSEC SEPA process because the County did not know what it was reviewing until they received a land use application from the Applicant. Mr. Hurson also stated that both he and Mr. D. Taylor were not interested in meeting with EFSEC to discuss these matters until a local land use application was filed with the County.

03/18/03 Mr. C. Taylor had a telephone conversation with Commissioner Huston regarding the BOCC's position on process for local land use review.

- Mr. C. Taylor briefly summarized his recent communications with Mr. Hurson, Mr. D. Taylor and Mr. C. White and reiterated the Applicant's concerns regarding having a clear process and timeline agreed to with the County before submitting a land use application.
- Mr. C. Taylor noted that the County had, to date, not offered a clear and consistent position on process and timeline for County review, and that different County representatives had suggested several different approaches and timelines over the past few months.
- Mr. C. Taylor stated that the Applicant was very eager to proceed with the local land use review, but that given the very large investment the Project represents (approximately \$180 million), Applicant felt it necessary to have clarity regarding process and timeline before formally submitting an application leading to a review with an unknown process and timeframe.
- Mr. C. Taylor stated that the Applicant believed that because the County's ordinance, KCC 17.61A was not written to address projects being reviewed by EFESC, the County could choose to go through the rezone and comprehensive plan change but not the development agreement and development permit, as these documents were more related to siting and permitting (which are EFSEC's role in this case) rather than traditional land use and zoning.
- Comm. Huston assured Mr. C. Taylor that the County was interested in making a decision re. land use and zoning and that he believed the

County did not need to do SEPA review if EFSEC was already doing this. Comm. Huston stated he did not feel a text amendment was something the BOCC would want to consider at that time.

- 03/18/03 Mr. C. White forwarded Mr. Taylor a copy of the County's comprehensive plan docketing request form to be submitted along with the application.
- 03/27/03 Applicant submitted two copies of a draft application to the County Planning Department for administrative review (the cover letter to this application is included as Attachment 15).
- 03/27/03 Mr. C. White sent an email acknowledging receipt of two copies of the application and indicated he and Mr. D. Taylor would both be out of the office the following week but would review the application as soon as possible and update Mr. C. Taylor regarding the County's process once he had reviewed the application (Attachment 16).

### ***April 2003***

- 04/15/03 Mr. C. White sent a letter to Mr. C. Taylor containing his comments on the application that had been submitted on 3/27/03 for administrative review (Attachment 17). The comments in the letter were limited almost entirely to the cover letter that accompanied the application and did not deal directly with any of the substantive content of the application itself. Mr. C. White also noted some additional information that he believed needed to be included with the application, such as a list of adjacent property owners and site plans noting the parcel numbers proposed for rezone and comprehensive plan changes.
- 04/25/03 Mr. C. Taylor met with Comm. Huston to discuss the County's response letter and clarify County's proposed approach to local land use review. Mr. D. Taylor and Mr. White were invited to attend the meeting but both of them were out of the office.
- Comm. Huston confirmed that the County would not be conducting SEPA review, as EFSEC already had begun their SEPA review.
  - In response to a question from Mr. C. Taylor regarding the Planning Department's request for the Applicant to apply for a development permit and development agreement, Comm. Huston noted that this was essentially arguing over "semantics" and that the County was only intending to do a land use review and not a permitting and siting review.
  - He stated that he believed the development agreement was the document that would communicate the County's position to EFSEC re. local land use consistency and this same document would contain any other proposed conditions the County felt should be imposed on the

Project. He noted that putting conditions in the rezone or comprehensive plan amendment could amount to a “contract rezone” which he believed was legally questionable.

- He stated that while the use of the terms “development agreement” and “development permit” (per KCC 17.71A) might suggest a siting or permitting process at the County level, the document would not constitute a “permit”, as the permit would ultimately be issued by EFSEC.
- He directed the Applicant to note in the cover letter to the rezone application that Applicant is seeking a development agreement and development permit.

04/28/03

Applicant’s attorney Mr. Tim McMahan had a phone conference with Mr. Hurson regarding the scope and content of the proposed County review. Mr. McMahan stated his view that applying for a development agreement, rezone, comprehensive plan amendment and development permit were beyond what is required under WAC 463-28-030. However, in light of the fact that KCC 17.61A bundles all of these elements together, it was not clear to the Applicant how the County could limit its review to local land use issues while preserving EFSEC’s role and authority to issue a site certificate. Mr. Hurson stated that the County agreed that separate County SEPA review was not appropriate, given EFSEC’s role.

After discussing the matter, Mr. Hurson and Mr. McMahan agreed that Applicant should indicate in a letter to the County that:

- Applicant seeks a development agreement and development permit only because the County code does not appear to enable separate review of the rezone and comprehensive plan amendment without these approvals.
- Applicant would submit a SEPA checklist, even though SEPA review will be handled by EFSEC, in order to better enable County review.
- Clarify that any County land use approval(s) can not stand on their own (as permission to build and operate the Project) because they are part of the EFSEC process and do not allow Applicant to build and operate the Project without receiving site certification from EFSEC.
- Applicant understands that the County’s review will be limited to zoning-related standards such as setbacks and density, as EFSEC is responsible for the siting and permitting of the Project.

04/30/03 Applicant submitted a revised cover letter electronically (to accompany the administrative review draft application that was submitted on March 27, 2003) to Mr. White based on comments received from him. (Attachment 18)

04/30/03 Mr. White sent an email to Mr. C. Taylor in response to the cover letter and email above (Attachment 19) In his email, Mr. White stated that it would be necessary for the Applicant to submit a new application (either “draft” or

“formal”) rather than a revised cover letter. Mr. White referenced his letter to Mr. C. Taylor of 4/15/03 and noted that the adjacent land owner list requested by the County was not included in the current application. Mr. White also noted the need for additional maps indicating the parcel numbers for which rezone and comprehensive plan changes are requested.

- 04/30/03 Mr. C. Taylor spoke to Mr. White concerning the revised cover letter submitted that day via email.
- Mr. White stated that the only sections of the County’s development activities application that should be filled out and submitted were Page 1, Page 2 and Section 3 and that no SEPA checklist should be included, as this information was already available in the EFSEC ASC.
  - He further stated that the Applicant should indicate they are applying for a development agreement and development permit in the narrative description section rather than in the cover letter.
  - Mr. White also informed Mr. C. Taylor that the Applicant would be required to submit a large number of copies of the application at the time the “formal” application was submitted so the County could distribute them to interested parties and adjacent landowners.
  - Mr. White stated that the application would not be deemed complete by the County unless these additional copies were also submitted but he did not provide Mr. C. Taylor with the number of copies that were required.
  - He also noted several additional attachments and exhibits that should be included (e.g. two identical maps showing the tax parcel numbers proposed for rezone and comprehensive plan change and a list of landowners with adjoining parcels within 300 feet of the proposed Project) as well as a check for \$450 for the County’s application fee.

### ***May 2003***

- 05/01/03 EFSEC Land Use Consistency Hearing Held in Ellensburg. Applicant (Mr. D. Peoples and Mr. C. Taylor) testified regarding the changes in Kittitas County regulations concerning wind farm zoning and siting that had taken place while the Project was under development. Both the Applicant and Kittitas County agreed that the project was currently not in compliance with local land use and zoning. Mr. C. Taylor stated that the Applicant intended to file a land use application with Kittitas County to seek consistency with local land use and zoning, but that the Applicant believed it was necessary to have a clear understanding of the process and timeline for the County’s review of the land use application prior to filing any such application.
- 05/20/03 Applicant submitted a revised permit application to the County.
- 05/28/03 Mr. C. White sent a letter to the Applicant requesting more changes to the land use application (Attachment 20). In the letter Mr. C. White stated

that notice of the application could not be sent out until the revised application was received along with 650 copies.

### ***June 2003***

- 06/02/03 Applicant submitted another revised land use application to the County.
- 06/09/03 Mr. C. White sends a letter to Mr. C. Taylor deeming the permit application incomplete (Attachment 21). In the letter Mr. C. White requests 370 copies of the application be submitted along with a complete application.
- 06/16/03 Applicant made changes and submitted the permit application again along with 370 copies to the County.
- 06/25/03 Mr. C. White sends out a memorandum notifying interested parties that the Applicant submitted a complete permit application on June 16, 2003 (Attachment 22).
- 06/26/03 EFSEC hearing held in Ellensburg. EFSEC heard testimony to decide which petitioners would be granted intervener status in the adjudicatory hearings process for the Kittitas Valley Wind Power Project. Approved interveners include: Chris Hall, Kittitas County, Steven Lathrop, Phoenix Group, RNP, ROKT, CTED, Sierra Club, and Counsel for the Environment.
- 06/26/03 Mr. C. Taylor, Mr. A. Young, and Mr. Peeples met at the Kittitas County Permit Offices with Mr. Clay White and Mr. Jim Hurson to discuss the County process and schedule for the KVVWPP. See Attachment 23 for a summary of the meeting.
- Notice of the KVVWPP County permit application was released on 6/25/03 and the deadline for comments is 7/28/03.
  - The idea of a joint notice period on the DEIS with EFSEC and the County, then setting the public hearing date after the comment period ends was discussed.
  - Clay White said he would be meeting with Shapiro and Huckell/Weinman to discuss info sharing protocols between Zilkha and enXco.
  - A staffing agreement between the Applicant and the County was discussed to help facilitate the review of Applicant's land use application. The County indicated they did not plan to bring in additional staff but will have Clay White work overtime.
  - Clay White said that based on current timelines, he would expect a decision from the BOCC on the permit application sometime between November 2003 and January 2004.

- Darrel Peeples said he would like to have a draft schedule to present to EFSEC on 7/7/03. Jim Hurson said he could propose a schedule based on the County approving the permit application but will need to have time built in for approval.
- The following draft schedule was assumed by the County if they approved the permit application:
  - 09/01/03 - DEIS released
  - 09/30/03 - Public comment period ends
  - 11/01/03 - Consultant response to comments
  - 11/10/03 – Set hearing dates for BOCC and PC
  - 12/10/03-12/15/03 - Planning Commission hearings
  - 01/03/04 – BOCC hearings
  - Mid January – Decision from BOCC

06/30/03 Applicant (C. Taylor) met briefly with Clay White to inform him of the fact that a Potential Site Study request for the Wild Horse Wind Power Project would be filed the following day with EFSEC. Mr. Taylor asked if C. White had any questions and offered to meet at any time to discuss the project further. Mr. White said he had no questions at that time but encouraged the Applicant to file a County land use application for the Wild Horse project as soon as possible after the EFSEC application is filed.

***August 2003***

8/1/03 The Applicant filed another extension request to extend the period required for preemption until January 15, 2004. This extension request was based on the assumption that the DEIS was going to be issued by the end of October, 2003 and the County’s process would be completed within 60 days of the release of the DEIS. The request was granted by the Council.

08/05/03 Staffing and Consultant Agreement (Attachment 24) was accepted and signed by the BOCC enabling the County to hire additional staff to help facilitate the review of Applicant’s land use application. The sum of \$20,000 was deposited by the Applicant into an interest-bearing account maintained by the County to pay for such services.

08/27/03 Meeting of Applicant representatives (C. Taylor; D. Peeples & T. McMahan– via telephone) with C. White and J. Hurson to discuss possible consideration of off-site alternatives in the DEIS.

C. White expressed the County’s desire for the EFSEC DEIS to include an analysis of off-site alternatives. D. Peeples responded that EFSEC staff had informed him that they were willing to consider whatever alternatives analysis was developed by the County and their consultants, but that

timing was a concern for EFSEC, as they did not wish to delay the release of the DEIS. C. White said the timing of the release of the Desert Claim (enXco) DEIS was still not certain but that the County would know more in two weeks re: schedule and timing.

The issue of what is required in terms of alternatives analysis under the SEPA regulations and EFSEC regulations WAC 197-11-440(5)(5) Mr. Hurson said the County was concerned about going through its land use process without any analysis of alternatives, noting that opponents to any particular project would likely raise this issue. D. Peeples noted that the Applicant was concerned about comparing the Kittitas Valley, Desert Claim and Wild Horse projects as “reasonable alternatives” to each other, because, in fact, they are not alternatives. J. Hurson responded that he understood the Applicant’s concerns and was willing to work on language for the DEIS that made this point clear. T. McMahan offered his legal opinion that WAC 197-11-440(5)(d) requiring alternative site analysis for projects requiring a rezone was intended to apply to traditional rezoning actions, such as changing the designation of an area from agricultural to residential or commercial to industrial. Mr. Hurson noted that the County would like to have the alternative site analysis that was to be prepared by Huckel-Weinman for the Desert Claim DEIS included in the EFSEC DEIS for the Kittitas Valley project. It was resolved the C. White would follow up with Huckell/Weinman and EFSEC and then contact the Applicant regarding preparation of the alternative site analysis.

### ***September 2003***

09/03/03 Meeting in Kirkland to discuss DEIS review of off-site alternatives with representatives of Kittitas County (Jim Hurson and Clay White), enXco (Josh Brower), Huckell/Weinman and Associates (Richard Weinman and Chris Lawson), and the Applicant (C. Taylor and D. Peeples). The meeting participants discussed the County’s desire to include consideration of off-site alternatives in the DEIS for both the Desert Claim and Kittitas Valley projects. The issue of what type of alternatives analysis is required under SEPA for the Desert Claim project and under EFSEC’s rules for the Kittitas Valley site was discussed. Mr. R. Weinman explained his view that the inclusion of off-site alternatives analysis would strengthen the DEIS whether it was legally required or not. Mr. Hurson stated that the County felt that analysis of other potential sites in the County was required because the County would be making a re-zone decision and that the public would expect such analysis. Mr. Peeples stated that he did not believe such alternative site analysis was required for the Kittitas Valley project but that if the inclusion of such information could be accomplished in a reasonable amount of time and this would be beneficial for the County, that the Applicant was willing to cooperate in developing such an analysis.

Mr. Weinman offered his view of what the County's objectives were with regard to review of proposals for wind farms:

The County has chosen to adopt a process for consideration of specific wind power projects and has decided not to do a programmatic EIS or a County-wide wind power zoning and planning process. The County deliberately chose a site-specific review process. Therefore, it would be difficult for the County to state that the County has a goal of siting a specific number of megawatts of wind energy facilities, but he believed the County would adopt findings and conclusions as part of the approval or denial of specific proposals that address the County's broader goals with regard to the siting of wind energy facilities.

Mr. Hurson stated that the County's goals with regard to wind farm siting are embodied in Chapter 17.61A of the County Code – which is essentially to permit the siting of wind farms “where they make sense.”

Mr. Peeples noted that it was likely EFSEC would have concerns about the impact of adding this off-site alternatives analysis on the schedule for release of the Kittitas Valley DEIS. The rest of the meeting was focused on the logistics of developing off-site alternatives analysis.

### ***October 2003***

10/15/03 Mr. C. Taylor and Mr. D. Peeples met with Mr. Clay White and Mr. Jim Hurson to discuss the content and format of the Development Agreement and the County hearing process schedule. A summary of this meeting is attached (Attachment 25). During the meeting it was decided that the Mountain Star development agreement would not be the best model for the KVVPP development agreement. Both the County and the Applicant agreed that mitigations set out in the DEIS will provide substantive content for the development agreement and, if approved, would provide the basis for a stipulation submitted to EFSEC resolving all County issues. The County expressed a desire to review all responses to comments on the DEIS prior to commencement of its hearing process stating that they needed the responses to meet SEPA requirements. At this meeting the County expressed a desire to review all responses to comments on the DEIS prior to commencement of its hearing process stating that they needed the responses to meet SEPA requirements. This was the first time that this requirement had been stated. Prior to that the demand was limited to the issuance of the DEIS before the County commenced its process. This statement was also contrary to the fact that the County was exempt from an EIS requirement. Generally responses are not be issues until the FEIS, which was pursuant to EFSEC practice subsequent to its hearing (usually about six weeks after its hearing) Further it could take at least 90 to 120 days after the close of the DEIS comment period to get preliminary

responses. Based on the expected release date of the DEIS, the County staff outlined their expectations for their review of the KVVPP land use application.

10/30/03

Mr. C. Taylor sent a letter to Mr. Clay White thanking him for taking the time to meet with him and Mr. Peeples regarding the County’s anticipated process for reviewing the KVVPP land use application (Attachment 27). Attached to the letter was a draft schedule for the County’s review process Mr. Taylor put together based on the steps and timelines the County described at the meeting on 10/15/05 (This schedule for approval is outlined below and is also included as Attachment 26). Mr. Taylor expressed his concerns about the lengthy timeline particularly give that the County does not have to complete a SEPA review since EFSEC is serving as the lead agency for SEPA review. Mr. Taylor suggested the County eliminate potentially redundant SEPA steps that are already built into the EFSEC process so they could accelerate their review process and reduce unnecessary demands on the County.

| <b>Date</b> | <b>Action</b>   |
|-------------|---|
| 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"> <li>• If acceptance of the DEIS is <u>NOT</u> appealed - Preparation for Land Use Hearing (30 days)</li> <li>• Land Use Hearing (1-5 days of hearings)– Joint hearing with BOC and Planning Commission. Planning Commission votes on the Rezone, and Comprehensive Plan Amendment requests.</li> </ul> |
| 4/9/04      | <ul style="list-style-type: none"> <li>• If acceptance of the DEIS IS appealed - Preparation for BOC Appeal Hearing (42 days)</li> <li>• BOC holds Appeal Hearing (1-5 days of hearings) then proceed to steps above at same hearing (Planning Commission, public testimony, etc.)</li> </ul>   |
| 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 – (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.   |

### ***November 2003***

11/05/03 Mr. Clay White sent an email to Mr. C. Taylor in response to Mr. Taylor's letter on 10/30/03 (Attachment 28). In the email Mr. White stated that, "Kittitas County cannot commit to specific project timelines because we have no control of the environmental documents being prepared by Shapiro and EFSEC." He further stated that the County was still waiting for the DEIS to be issued so they could review its adequacy along with the response to comments. Until then, the County cannot move forward with the public hearing process.

### ***December 2003***

12/12/03 Draft Environmental Impact Statement (DEIS) for Kittitas Valley Wind Power Project released by EFSEC.

12/15/03 Regular EFSEC meeting in Olympia. Applicant representatives attended in person, (D. Peeples and C. Taylor) and Kittitas County (J. Hurson) participated via telephone.

Irina Makarow, EFSEC siting manager, provided a status report to the Council. Ms. Makarow stated the Applicant had requested an extension of the 12 month statutory processing time. .

Chair Luce asked J. Hurson was by what the timeframe was for completion of the County's review of the land use application. Mr. Hurson responded that the County did not yet know when their review would be completed and that the County's schedule was dependent on the timing of EFSEC's DEIS and response to comments on the DEIS.

Chair Luce instructed the County to provide a written explanation of the process and timeframe for completing review of the land use application no later than 1/13/04 at the pre-hearing conference in Ellensburg. Chair Luce stated that EFSEC needed "a definitive statement from the County" on how they planned to proceed with review of the land use application.

Mr. Peeples stated that the Applicant was continuing to work with the County regarding schedule and process for review of the Applicant's land use application but that the Applicant still did not have a schedule or even a definitive process from the County. Mr. Peeples noted concerns about the length of time that review may take to complete and potential problems such delay might create for the overall EFSEC review schedule.

In response to a question from Council member Towne, Ms. Makarow responded that the release of the DEIS had been delayed because a)

Kittitas County had requested that EFSEC's DEIS consider off-site alternatives, which was not originally within the scope of work of EFSEC's independent consultant preparing the DEIS, Shapiro and Associates and b) new information regarding the impacts of the Desert Claim project became available from the County DEIS process which was included in the cumulative impacts analysis for all three proposed wind power projects in Kittitas County (Kittitas Valley, Desert Claim and Wild Horse.)

Mr. Hurson responded by stating that he found it "offensive" for EFSEC staff (Irina Makarow) to suggest that Kittitas County had delayed the EFSEC review process and that "Kittitas County had not delayed the process by one day."

### *January 2004*

01/13/04 EFSEC pre-hearing conference in Ellensburg. In response to the previous request from J. Luce for the County to provide a definitive statement regarding the process and timeline for completing land use review for the project, J. Hurson and C. White presented a one-page flow chart of the County's proposed process. Mr. Hurson stated the County felt it needed "the functional equivalent of a Final EIS" to make its land use decision. Regarding timelines, Mr. Hurson stated that he was "not all comfortable" putting dates on the flow chart. Mr. Hurson stated the County would know better what the likely timeline would be once all comments had been received and reviewed on the DEIS.

Council member Towne noted that the flowchart included a box with the words "BOCC makes permit decision" and asked Mr. Hurson if this was a permit or a land use decision the County was intending to process. Mr. Hurson responded that the County envisioned one consolidated process that incorporates zoning, comprehensive plan amendment, and an operating permit. He said; in the line between land use and permitting was a very gray area and noted that mitigation would also be addressed in the County process.

Mr. Peebles made an additional extension for preemption request extending the deadline until February 13, 2004. Mr. Peebles noted that the process proposed by Kittitas County was a siting process, rather than a traditional zoning process and that this was duplicative of the EFSEC process. He further noted that the Applicant did not approach the issue of preemption lightly. EFSEC council voted unanimously to extend the pre-emption deadline for 30 days.

01/13/04 EFSEC holds public comment meeting on DEIS in Ellensburg. In his verbal comments, C.White noted that he believes the DEIS needs additional work in several areas. In his written comments, dated 1/12/04,

Mr. White provides 14 pages of comments that propose major revisions the entire DEIS.

- 1/19/04 Applicant requests that Ellensburg Chamber of Commerce Executive Director Allan Walker facilitate a meeting between representatives of Kittitas County, the Applicant and EFSEC to make a final attempt at reaching agreement regarding the process and timeline for County review of the local land use consistency issue (Attachment 29).
- 1/22/04 Clay White declines invitation to meet with Applicant and ESFEC and informs Mr. Walker that the County does not see any point in such a meeting because the County has made its position clear and does not believe the proposed process and timeline can be modified in any way.
- 1/29/04 Alan Walker confirms via e-mail to C. Taylor, the above declined invitation by C. White, to meet with applicant (Attachment 30).

***February 2004***

- 2/12/04 Applicant files request for pre-emption with EFSEC.

## Chronology of Kittitas County Approach to Wind Farm Development

### ATTACHMENTS

|    |          |  |
|----|----------|--|
| 1  | 11/20/02 | Letter from C. Taylor to KV BOCC                 |
| 2  | 01/24/03 | E-Mail from D. Taylor                            |
| 3  | 02/03/03 | BOCC Study Session Notes                         |
| 4  | 02/05/03 | Letter from J. Hurson to D. Peeples              |
| 5  | 02/10/03 | E-mail from J. Hurson to D. Peeples              |
| 6  | 02/11/03 | E-Mail reply from D. Peeples to Hurson           |
| 7  | 02/14/03 | E-mail from J. Hurson to D. Peeples              |
| 8  | 02/16/03 | E-Mail reply from D. Peeples to Hurson           |
| 9  | 02/19/03 | Letter from C. Taylor to P. Huston               |
| 10 | 02/25/03 | County Land Use Meeting Summary                  |
| 11 | 02/26/03 | E-Mail from C. Taylor to County                  |
| 12 | 02/27/03 | E-Mail from J. Hurson to C. Taylor               |
| 13 | 03/03/03 | E-Mail from C. Taylor                            |
| 14 | 03/04/03 | E-Mail from J. Hurson to C. Taylor               |
| 15 | 03/27/03 | Cover letter for Draft Application to County     |
| 16 | 03/27/03 | E-Mail from C. White to C. Taylor                |
| 17 | 04/15/03 | Letter from C. White to C. Taylor                |
| 18 | 04/30/03 | Revised cover letter E-Mailed to C. White        |
| 19 | 04/30/03 | E-Mail from C. White C. Taylor                   |
| 20 | 05/28/03 | Letter from C. White to C. Taylor                |
| 21 | 06/09/03 | Letter from C. White to Mr. C. Taylor            |
| 22 | 06/25/03 | Memoranda of Application Receipt Kittitas County |
| 23 | 06/26/03 | Summary of Meeting w/ Kittitas County; Schedule  |
| 24 | 08/05/03 | Staffing and Consultant Agreement                |
| 25 | 10/15/03 | Summary of Meeting                               |
| 26 | 10/15/03 | County Timeline                                  |
| 27 | 10/30/03 | Letter from C. Taylor to C. White                |
| 28 | 11/05/03 | E-Mail from C. White to C. Taylor                |
| 29 | 1/19/04  | Letter from C. Taylor to A. Walker               |
| 30 | 1/29/04  | E-Mail from A. Walker to C. Taylor               |

# ATTACHMENT 1

November 20, 2002  
Letter from C. Taylor to KV BOCC  
Regarding Proposed Amendments to Chapter 17.61



[www.zilkha.com](http://www.zilkha.com)

Ellensburg Offices  
222 Fourth Street  
Ellensburg, WA 98926  
Phone: 509-962-1122  
Fax: 509-962-1123

Northwestern Regional Office  
210 SW Morrison  
Suite 310  
Portland, OR 97204  
Phone: 503-222-9400  
Fax: 503-222-9404

Kittitas County Board of Commissioners  
205 West 5th Street  
Ellensburg, WA 98926

November 20, 2002

**RE: Proposed Utilities Ordinance Amendment for Windfarm Resource Overlay Zone**

As you know, Zilkha Renewable Energy is a wind energy developer with offices in Ellensburg that is actively developing prospective wind power projects in Kittitas County. We have testified in person and in writing several times on various proposals regarding permitting procedures for wind projects.

While we understand and appreciate the expressed intent of the Board of County Commissioners (BOCC) to elevate the decision making process for permitting of wind farms from the Board of Adjustment to the BOCC, we have significant concerns regarding the language of the proposed text amendment to Chapter 17.61. The proposed permitting process for major wind energy developments would require applicants to navigate several procedural hurdles rather than a single Conditional Use Permit (CUP) process, as under the current utilities ordinance.

The proposal to require a development agreement, comprehensive plan amendment, rezone, and a development permit to site a wind farm is far more onerous than the requirements to site a thermal power plant, mining operation, or many other types of facilities that would have far greater impacts on surrounding land uses. The proposed process, by its very complexity, would also greatly increase the potential for delay and legal challenges by opponents of such facilities. Such delay and litigation would not serve the interests of the County, wind energy developers or the public.

As you have noted at several public meetings, consideration of proposed wind energy facilities is best done on a site-specific basis. It is important for the County and the public to have ample opportunity to review pertinent information and make informed decisions regarding the siting of wind farms. This goal can be met without the burdensome process proposed in the utilities ordinance amendment. Wind energy facilities have been permitted successfully in many other jurisdictions around the country with far simpler processes than that proposed here. Adoption of the proposed ordinance would make the process for permitting a wind farm in Kittitas County unnecessarily complex.

As always, please feel free to contact our office for more information or to discuss any questions you may have. We appreciate this opportunity to offer input on this important matter.

Sincerely,

Chris Taylor  
Project Development Manager

# ATTACHMENT 2

January 24, 2003  
E-Mail from D. Taylor to Applicant

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

From: David Taylor [<mailto:DTAYLOR@co.kittitas.wa.us>]  
Sent: Friday, January 24, 2003 9:28 AM  
To: Jennifer Diaz  
Subject: RE: Kittitas Valley Wind Power Project

At this point I can't schedule a meeting with Zilkha with regards to consistency until I have an opportunity to discuss the issues with my Commissioners. I'm scheduled to meet with them on this issue February 3, 2003 and will be able to schedule a meeting with Zilkha after that.

DT

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

From: Jennifer Diaz [SMTP:jdiaz@zilkha.com]  
Sent: Wednesday, January 22, 2003 9:56 AM  
To: dtaylor@co.kittitas.wa.us  
Subject: Kittitas Valley Wind Power Project

David,

My name is Jennifer Diaz. I am the project coordinator for Zilkha Renewable Energy in Ellensburg. Chris Taylor would like to meet with you regarding land use consistency.

Are you available the week of February 3rd? He will be in town the 6th and 7th. Please let me know if either of those days work for you.

Thanks,

Jennifer

# ATTACHMENT 3

February 03, 2003

Minutes of Community Development Services Study Session

Present: P. Huston, B. Coe, M. Golladay, J. Hurson,  
D. Gaidos, D. Taylor, C. Dunn, A. Draper & J. Diaz

Minutes of  
Community Development Services Study Session

February 3, 2003

Those Present: Perry Huston, Bruce Coe and Max Golladay

Also Present: Jim Hurson, Derald Gaidos, David Taylor, Catherine Dunn and Alexis Draper and Jennifer Diaz of Zilkha representing the public

**EFSEC**

Jim Hurson said that Zilkha had hired an attorney, Darrel Peeples, to help get their project through the EFSEC process.

Perry Huston said that the Board was supposed to pick a replacement member for the EFSEC board. He did not want to reappoint the former member. The member before that was the Fire Marshal and it was not appropriate to appoint him.

Hurson said that he had drafted a letter to Mr. Peeples stating that their project was not currently consistent with Kittitas County regulations and outlining the State regulations regarding this.

Perry Huston said that he wants Zilkha to agree that they have not become consistent or state that they would not be coming into compliance.

Hurson said that was what he intended with his letter. He gave the options as Zilkha can obtain a rezone of the property they wish to have as wind farm to become consistent with County regulations or they can show EFSEC that they have made an effort to become consistent. If they get the rezone through the county, it would shorten their EFSEC time. Zilkha said that the reason they had applied to EFSEC was that their appeal time would be shorter.

Bruce Coe said that the question is not to approve or deny but the conditions that the county may put on the project being more than Zilkha may be willing to adhere to. He said that his worry was that the county was just putting off the fight that will ultimately need to be fought.

Dave Taylor said that EFSEC requires their applicants to apply to the local government for consistency.

Huston said that the county needed to establish the record for EFSEC the same way as for the Hearings Boards. The county can then show EFSEC what the flags are for the county that way.

Huston went on to say that there were three bills coming out of committee this legislative session limiting or eliminating the Growth Management Hearings Boards.

Jim Hurson said that if you pass a comprehensive plan amendment first then apply for a rezone, the rezone would remain valid if the amendment were appealed. He said that if the EFSEC project is not consistent with the designation of the proposed site, then the applicant needs to seek consistency through a rezone. If they get consistency, they will have to adopt a mitigation plan similar to the Trendwest process.

He said that he had approached Dennis Reynolds, who has represented the county on previous EFSEC projects, about developing and negotiating the mitigation plan. Dave Taylor asked him to consider other attorneys for this.

Taylor went on to say that this was the right way to go. He said that to put Zilkha on notice that the county has been through this process before and know what happens during it. He agreed about the importance of building a good record.

Max Golladay said that he was afraid to appear to be telling Zilkha how to run their business. He said that this letter just states the facts instead of directing them.

Hurson said that even Olympic Pipeline Co. achieved consistency within the county. This strategy would get the decision back at the local level.

Taylor said that the record would show why mitigation measures would be necessary and why these issues are important to the county.

Perry Huston said that EFSEC is just a bunch of government hacks and they need to be reminded that local governments have requirements.

Taylor then said that this is the 13<sup>th</sup> Legislative session since the inception of the Growth Management Act and the legislators have not seen fit to add any wording giving EFSEC the right to pre-empt local process.

There was more discussion along these lines.

Bruce Coe asked what is the weakest part of the process that Hurson's letter outlined. What damage control would be needed in 6 months time. Hurson

replied that the letter would just be outlining the process needed for any application.

Coe asked if Hurson and Taylor were confident that this letter would accomplish what they wanted.

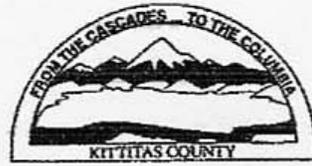
Perry Huston said that he wanted Zilkha to work with the local process or state definitely that they will not be working through the local process. He said that all the Board can do is give them a chance.

There was some discussion on using outside counsel, which Huston said he had no issue with.

# ATTACHMENT 4

February 05, 2003  
Letter from J. Hurson to D. Peeples  
Comments on ZRE's application with EFSEC

# ***Kittitas County Prosecuting Attorney***



**GREGORY L. ZEMPEL**

KITTITAS COUNTY COURTHOUSE

205 WEST FIFTH, ELLENSBURG, WA 98926-3129

TELEPHONE (509) 962-7520

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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.

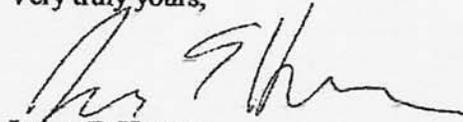
2) *Scenario where land use change denied.* If the county denies the land use change, your client would be in position to demonstrate a good faith effort to resolve noncompliance and an inability to reach an agreement to resolve issues. Both of those findings are required by the applicable regulations. 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

# ATTACHMENT 5

February 10, 2003  
E-mail from J. Hurson to D. Peeples

-----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

# ATTACHMENT 6

February 11, 2003  
E-Mail reply from D. Peeples to Hurson

-----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 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 a 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.

# ATTACHMENT 7

February 14, 2003  
E-mail from J. Hurson to D. Peeples

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

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

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 for

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

# ATTACHMENT 8

February 16, 2003  
E-Mail reply from D. Peeples to Hurson

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

From: dpeeples [<mailto:dpeeples@ix.netcom.com>]  
Sent: Sunday, February 16, 2003 5:52 PM  
To: James Hurson  
Cc: Chuck Lean; Chris Taylor  
Subject: RE: Kittitas Valley Wind Project

Jim:

Thank you for your response. I am getting ready to leave for Australia tomorrow so I am going to be brief. Thank you for your offer to meet on the week of Feb. 24. I will have Chris contact Dave and set up a time. I will not be there but Chris can handle it by himself. Another possibility would be to have just Chris and Dave meet during the week of Feb. 17 (although I am not sure of Chris's schedule). I don't know if attorney's need to be involved in the process right now, sometimes we can impede progress. But it is your call.

I don't think there is an appearance of fairness or ex parte issue regarding EFSEC staff being present, which is what I meant in my last communication. It might be helpful, especially if any consideration is given to a joint hearing process with EFSEC. As I stated before we are willing to consider all reasonable options in order to see if we can come up with a process that can generally meet every ones needs.

We would like to sit down and talk with the County as soon as practical and get a dialogue going and resolve the issue.

I will be in close contact by E-Mail while I am gone and may be available for conferences by telephone if need be. Just give me some time to set it up.

Thank you,

# ATTACHMENT 9

February 19, 2003  
Letter from C. Taylor to P. Huston  
Summary of Meeting February 7, 2003

February 19, 2003

Commissioner Perry Huston  
Kittitas County Board of County Commissioners  
205 W 5<sup>th</sup>, Room 108  
Ellensburg, WA98926

RE: EFSEC and Kittitas County Land Use Consistency

Dear Mr. Huston,

Thank you for taking the time to meet with me on February 7<sup>th</sup> regarding our application with EFSEC for the Kittitas Valley Wind Power Project and land use consistency issues with Kittitas County. I appreciated your input regarding the County's desire for this proposed project to be reviewed through the process outlined in the ordinance you adopted in late 2002. As I explained during our meeting, we have very real concerns that the County's proposed process might:

- Create unnecessary duplication of the type of hearings and process that EFSEC will already be pursuing as part of its review of our application
- Extend the timeline for Project review far beyond the 12 month timeframe that is envisioned by the EFSEC statute (as of today, we have not received any firm estimate from any County official of the time the County's process is expected to take)

Despite these reservations, we are committed to working cooperatively with the County to resolve the land use consistency issue. We are eager to meet with County representatives to discuss various approaches to resolving this issue that will address the concerns of all parties involved (the County, Zilkha, and EFSEC.)

Jim Hurson has suggested that the week of February 24<sup>th</sup> would be a convenient time for him and Dave Taylor to meet with us to try to resolve this issue. A meeting has been scheduled for Tuesday February 25<sup>th</sup> with myself and Dave Taylor to discuss this issue. If you and/or other commissioners or Mr. Hurson would like to attend, we would welcome your participation. If you believe it would be advantageous to include EFSEC staff in such a meeting, we would gladly consent to their presence.

As always, please feel free to contact me with any questions or concerns.

Regards,

Christopher Taylor  
Project Development Manager

# ATTACHMENT 10

February 25, 2003

County Land Use Consistency Meeting Summary Notes

Present: Dave Taylor, Clay White, Jim Hurson, & 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.

# ATTACHMENT 11

February 26, 2003

E-Mail from C. Taylor to County Staff:  
Dave Taylor, Clay White, and Jim Hurson  
Follow up notes from Land Use Consistency Meeting

-----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 6<sup>th</sup>, 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

# ATTACHMENT 12

February 27, 2003  
E-Mail from J. Hurson to C. Taylor  
Response to follow up notes

-----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 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

## ATTACHMENT 13

E-Mail from C. Taylor To The County Staff:  
James Hurson, Clay White, and Dave Taylor

-----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

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

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

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

Mobile: (509) 899-4609

# ATTACHMENT 14

March 04, 2003

E-Mail from J. Hurson to C. Taylor

Comments on Land Use Consistency Meeting Summary Notes

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

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

**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.

# ATTACHMENT 15

March 26, 2003

Cover letter for Draft Application to County



www.zilkha.com

Ellensburg Offices  
222 Fourth Street  
Ellensburg, WA 98926  
Phone: 509-962-1122  
Fax: 509-962-1123

Northwestern Regional Office  
210 SW Morrison  
Suite 310  
Portland, OR 97204  
Phone: 503-222-9400  
Fax: 503-222-9404

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

March 26, 2003

Dear Clay,

Attached is an administrative review draft of our applications for a rezone and sub-area comprehensive plan amendment to Wind Resource Overlay for the Kittitas Valley Wind Power Project (Project), as well as a draft SEPA environmental checklist.

This request for a site-specific rezone and sub-area comprehensive plan amendment is being made in compliance with WAC 463-28. This project is subject to the jurisdiction and being sited by the Washington Energy Facility Site Evaluation Council (EFSEC) pursuant to Application for Site Certification No. 2003-1. EFSEC has accepted the SEPA "lead agency" role pursuant to RCW 43.21C.030 and has issued a determination of significance (DS) and has begun the process of drafting an 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. We have provided Kittitas County with more information than would be necessary for a SEPA environmental checklist because it was readily available from the existing EFSEC Application, in the hopes that it would provide a clearer understanding of the project.

As part of the EFSEC review process, EFSEC requires the Applicant to seek a determination of land use consistency from the local jurisdiction. This re-zone and comprehensive plan sub-area amendment are requested to determine if the proposed land use is consistent with local land use regulations. 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.

After you have had a chance to review these materials, I suggest we schedule a meeting to go over them and any comments or changes you wish to offer. As indicated in the attached documents, I will serve as the primary contact for this Project.

Thank you,

Chris Taylor  
Project Development Manager  
Sagebrush Power Partners

# ATTACHMENT 16

March 27, 2003  
E-Mail from C. White to C. Taylor  
Receipt of Application

-----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

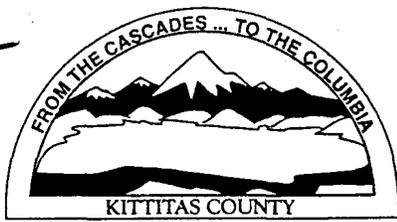
Planner II

Kittitas County Community Development Services

(509) 962-7506

# ATTACHMENT 17

April 15, 2003  
Letter from C. White to C. Taylor  
Draft Activities of Application



# Kittitas County

## Community Development Services

411 N. Ruby, Suite 2, Ellensburg, WA 98926  
Telephone: (509) 962-7506 ■ Facsimile: (509) 962-7697

---

April 15<sup>th</sup>, 2003

Zilkha Renewable Energy  
Attn: Chris Taylor  
222 East 4<sup>th</sup>, 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 28<sup>th</sup> – April 6<sup>th</sup>, 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 25<sup>th</sup>, 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 25<sup>th</sup>, 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 25<sup>th</sup>, 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 13<sup>th</sup>, 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 25<sup>th</sup>, 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 14<sup>th</sup>, 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

# ATTACHMENT 18

April 30, 2003  
Revised cover letter for County Application  
E-Mailed to C. White



[www.zilkha.com](http://www.zilkha.com)

Ellensburg Offices  
222 Fourth Street  
Ellensburg, WA 98926  
Phone: 509-962-1122  
Fax: 509-962-1123

Northwestern Regional Office  
210 SW Morrison  
Suite 310  
Portland, OR 97204  
Phone: 503-222-9400  
Fax: 503-222-9404

---

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

April 30, 2003

Dear Clay,

I received your letter of April 15<sup>th</sup> responding to the administrative review draft that we submitted on March 27<sup>th</sup> of our applications for a rezone and sub-area comprehensive plan amendment to Wind Resource Overlay for the Kittitas Valley Wind Power Project (Project.) In your letter, you requested that our cover letter make it more explicit that these applications and approvals are sought in conjunction with the review and final approval that is being sought through EFSEC. You also requested that we apply for a development agreement and development permit, pursuant to Kittitas County Code 17.61A. Please consider this letter a revised cover letter for the materials previously submitted.

While we do not believe that a development agreement or development permit are necessary in this case, given the fact that the County's land use action is part of a broader EFSEC process, we understand that you are concerned about separating these elements from the rezone and comprehensive plan amendment.

This request for a site-specific rezone and sub-area comprehensive plan amendment is being made in compliance with WAC 463-28. This project is subject to the jurisdiction of and being sited by the Washington Energy Facility Site Evaluation Council (EFSEC) pursuant to Application for Site Certification No. 2003-1. EFSEC has accepted the SEPA "lead agency" role pursuant to RCW 43.21C.030 and has issued a determination of significance (DS) and has begun the process of drafting an Environmental Impact Statement (EIS.) Therefore, detailed information regarding environmental impacts 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. We have provided Kittitas County with more information than would be necessary for a SEPA environmental checklist because it was readily available from the existing EFSEC Application, in the hopes that it would provide a clearer understanding of the project.

As part of the EFSEC review process, EFSEC requires the Applicant to seek a determination of land use consistency from the local jurisdiction. This re-zone and comprehensive plan sub-area amendment are requested in order to gain consistency with local land use regulations. Typically, an EFSEC applicant would not seek a development permit or development agreement to construct and operate a project because this is more in the nature of the responsibility and function of EFSEC. However because Kittitas County Code 17.61A does not appear to enable separate review of the plan amendment and rezone without these approvals (development agreement and development permit) we wish to include these in our request. It is our understanding that the County's consideration will be limited to traditional zoning issues, leaving site-specific permit decisions to EFSEC's jurisdiction.

Approval of a comprehensive plan amendment, rezone, development agreement and permit would be conditioned upon approval by EFSEC. We agree that any approval by the County of these limited applications cannot stand on their own merits, absent ESFEC approval.

Our intent is to make all reasonable efforts to ensure that the EFSEC application is consistent with the County's Comprehensive Plan and Zoning Code, in accordance with WAC 463-28-030. The fundamental siting proposal will be reviewed by EFSEC, and any final permit decision will be made by EFSEC. We anticipate that the development agreement and permit, if issued by the County, would be relatively abbreviated, primarily providing for approval conditioned upon EFSEC approval of the site certificate. As part of the zoning considerations, we would anticipate that the County would confine its decision to zoning-related standards, such as setbacks, density, and similar matters.

After you have had a chance to review these materials, I suggest we schedule a meeting to go over them and any comments you wish to offer or changes you wish to suggest. As indicated in the attached documents, I will serve as the primary contact for this Project.

Thank you,

Chris Taylor  
Project Development Manager

# ATTACHMENT 19

April 30, 2003  
E-Mail from C. White to C. Taylor  
Comments regarding revised cover letter

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

**From:** Clay White [mailto:ClayW@co.kittitas.wa.us]

**Sent:** Wednesday, April 30, 2003 3:11 PM

**To:** Chris Taylor; Clay White

**Cc:** David Taylor; James Hurson; dpeeples@ix.netcom.com; McMahan, Tim

**Subject:** RE: revised cover letter for land use application

Chris-

After reading your e-mail and attached letter it is unclear about what your expectations are from "submitting" a revised cover letter.

I believe it is important to point out that Zilkha Renewable Energy has not "submitted" a formal application to Kittitas County as of April 30th, 2003. The information received on March 27th, 2003 was a "draft" from which you asked for comments from this office.

My letter on April 15th, 2003 gave direction to the information needed in order for you to "submit" an application and have it deemed complete.

Although your revised cover letter seems to indicate you have chosen option 1) of my April 15th, 2003 letter, you have not supplied any of the information requested in that letter. Changing your cover letter does not change the information in your draft application.

For example your cover letter seems to indicate you are seeking a development agreement/permit as is required but you have not changed your application to reflect that fact. Your draft application still fails to supply Kittitas County with the "address list of landowners within 300' of the site's tax parcels. If adjoining parcels are owned by the applicant, the 300' extends from the farthest parcel". (This is the first item on the first page of the development activities application.)

Another issue needing to be addressed is the submitted site plans. There are many maps included within the draft application but there is no clear indication of the exact sub-area and zoning overlay boundaries.

Once you supply Kittitas County with revised information we would be happy to review your "draft" once again. If you would like to submit a formal application we will need the revisions along with the application fee.

Since I am sure you would like to get moving on this quickly, I wanted to get you some information right away. Please also reference my April 15th, 2003 letter if you have any questions about what needs to be included in the application.

Please do not hesitate to contact me if you should have any questions.

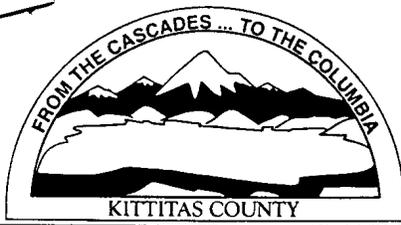
Regards,

Clay White  
Planner II  
KCCDS  
(509) 962-7506

# ATTACHMENT 20

May 28, 2003

Letter from C. White to C. Taylor  
Comments & Requests for County Application for Permit



*Kittitas County*  
*Community Development Services*

411 N. Ruby, Suite 2, Ellensburg, WA 98926  
Telephone: (509) 962-7506 ▪ Facsimile: (509) 962-7697

May 28<sup>th</sup>, 2003

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

RE: (Z-2003-06) Sagebrush Powers L.L.C. Application for Rezone, Comprehensive Plan Change, and Development Agreement/Permit

Dear Mr. Chris Taylor:

Kittitas County Community Development Services did receive your application on May 20<sup>th</sup>, 2003. Your application has been reviewed and the following changes are needed prior to deeming your application complete.

- 1) On page 2 of the development application the exhibits listed for questions 6) (*legal descriptions of property*) and 7) (*tax parcel numbers*) do not match the application. Since the information is listed in your application, please make sure the correct section of your application is referenced to the correct exhibit.
- 2) On page 2 of the development application the exhibit for question 9) (*location*) does not match the application. Exhibit 2 does not show the project location.
- 3) Please take out the first 5 paragraphs in Section III, as they do not pertain to any question in the application.

We will also need 650 copies of the Kittitas County application along with 40 copies of the submitted EFSEC application.

Notice of Application cannot be sent out for this submittal until we receive the revised document and copies of the application.

Please do not hesitate to contact me if you should have any questions regarding the above information.

Sincerely,

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

# ATTACHMENT 21

June 29, 2003

Letter from C. White to C. Taylor  
Comments & Requests for County Application for Permit



*Kittitas County*  
*Community Development Services*

411 N. Ruby STE 2  
FAX: (509) 962-7697

Ellensburg, WA 98926  
(509) 962-7506

June 9<sup>th</sup>, 2003

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

RE: (Z-2003-06) Sagebrush Powers L.L.C. Application for Rezone, Comprehensive Plan Change, and Development Agreement/Permit

Dear Mr. Chris Taylor:

Kittitas County Community Development Services did receive your revised application on June 2<sup>nd</sup>, 2003. Your application has been reviewed and the following changes are needed prior to deeming your application complete.

- 1) The 5 paragraphs under section III of your submittal still do not relate to any question within the application. As was stated in my May 28<sup>th</sup> 2003 letter, that information should be removed because much of it is incorrect or misstated. If you read your statements in question 9 on page 2 of the consolidated application under *Permitting process*, you have already covered that information.

If you choose to include this information in your application please move it under question 9 on page 2 of the consolidated application under *Permitting process*. We will still deem your application complete if you do not remove the 5 paragraphs but all interested parties will be aware that the information in your application is not entirely accurate in that specific area and that Zilkha was made aware of that fact.

We will need 370 copies of the Kittitas County application along with 40 copies of the submitted EFSEC application.

Please make sure to re-date the signature page. I noticed that was done on the last submittal, thank you.

Notice of Application cannot be sent out for this application until we receive the revised document and copies of the application.

Please do not hesitate to contact me if you should have any questions regarding the above information.

Sincerely,

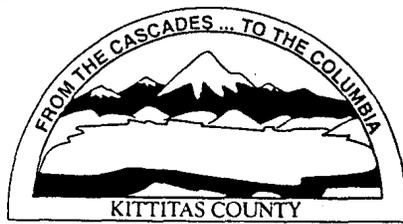
A handwritten signature in black ink, appearing to read "Clay White".

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

# ATTACHMENT 22

June 25, 2003

Memoranda of Application Receipt from Kittitas County



# Kittitas County Community Development Services

411 N. Ruby, Suite 2, Ellensburg, WA 98926  
Telephone: (509) 962-7506 • Facsimile: (509) 962-7697

## MEMORANDUM

**TO:** Federal Aviation Administration  
Federal Communication Commission  
Wa St Dept. Ecology - SEPA Registrar  
Wa St Dept. Ecology - Yakima  
Wa State Dept. of Fish and Wildlife  
Wa St Dept. Natural Resources  
Kittitas Co. Fire Marshal  
Kittitas Co. Environmental Health  
Kittitas Co. Prosecuting Attorney  
Kittitas Co. Public Works  
Kittitas County Sheriff's Dept.  
Kittitas County Commissioners Office  
Zilkha Renewable Energy  
Kittitas County PUD  
ROKT  
Renewable Northwest Project  
Adjacent Property Owners  
Interested Parties List

Bonneville Power Administration  
Kittitas Reclamation District  
City of Ellensburg  
City of Cle Elum  
City of Roslyn  
City of Kittitas  
Kittitas Co. Plans Examiner  
KITTCOM  
Yakama Nation  
Northwest Seed  
Puget Sound Energy  
Kittitas County Fire Dist. No. 2  
Charter Communications  
Ellensburg Telephone  
Pacific Northwest Regional Council of Carpenters  
EFSEC  
CTED  
Town of South Cle Elum

**FROM:** Clay White *CW*  
Planner II  
Kittitas County Community Development Services

**DATE:** June 25<sup>th</sup>, 2003

**SUBJECT:** Sagebrush Power Partners L.L.C. (Zilkha Renewable Energy)  
NOTICE OF APPLICATION – Wind Resource Development Permit Z-2003-06

Pursuant to RCW 36.70B and KCC 15A.03, notice is hereby given that Kittitas County did on June 16<sup>th</sup>, 2003, receive a complete application from Sagebrush Power Partners L.L.C. for a Windfarm consisting of a maximum of 121 wind turbines with a maximum height of 410ft (Ground to Blade Tip) and maximum width of 295ft (Rotor Diameter). The application is for a Development Agreement/Development Permit, a site-specific zone change that would overlay the existing Forest and Range and Agricultural-20 zoning with a Wind Resource Overlay Zoning, and a site-specific amendment to the Kittitas County Comprehensive Plan from a Rural designation to Wind Resource Overlay District. Enclosed please find a Notice of Application and related documents for the referenced application. Please retain these items for future reference.

Pursuant to RCW 80.50.180 Kittitas County is exempt from processing SEPA on this project (as required under RCW 43.21C.030) and the Energy Facility Site Evaluation Council (EFSEC) is lead agency for this project. Specifically, Sagebrush Powers L.L.C. in their application made to Kittitas County on June 16<sup>th</sup>, 2003 specifically tied their submission to the application submitted to EFSEC on January 13<sup>th</sup>, 2003.

Copies of the application submitted by Sagebrush Powers. L.L.C. to EFSEC on January 13<sup>th</sup>, 2003 are available to interested parties by contacting the Kittitas County Community Development Services Department.

Although Sagebrush Powers L.L.C. submitted an application to EFSEC on January 13<sup>th</sup>, 2003 they are required to comply with local land use as specified in WAC 463-28 and KCC 17.61A. Kittitas County is not limited in the scope of our review for this project. Further, if Kittitas County approves the submitted application, Sagebrush Powers. L.L.C. will need EFSEC approval before project construction. If EFSEC does not grant approval of the application submitted to them, the permits granted by Kittitas County would be void.

The submitted application is requesting a Wind Resource Development Permit as described in KCC 17.61A by obtaining the following permits:

- A Development Agreement/Development Permit to set forth the development standards for this project.
- A site-specific zone change that would overlay the existing Forest and Range and Agricultural-20 zoning with a Wind Resource Overlay Zoning.
- A site-specific amendment to the Kittitas County Comprehensive Plan from a Rural designation to Wind Resource Overlay District.

Written comments may be submitted to the Kittitas County Community Development Services Department, 411 N Ruby Street, Ellensburg, WA, 98926. An open record hearing has not been scheduled at this time.

If you have any questions, please do not hesitate to contact us.

**WRITTEN COMMENTS MUST BE SUBMITTED NO LATER THAN JULY 28<sup>TH</sup>, 2003**

# ATTACHMENT 23

June 26, 2003  
Summary of Meeting with Kittitas County  
Regarding Schedule and Process

**Summary of Meeting  
Kittitas Valley Wind Power Project  
Process & Schedule**

**Persons Present:** Clay White, Jim Hudson - Kittitas County Community Development Services  
Chris Taylor, Andrew Young, Darrel Peeples, Zilkha Renewable

**Date:** June 26, 2003

**Location:** Kittitas County Permit Center Offices

Meeting Highlights

- Working with Irina on schedule & timeline
- Notice of application out 6/25/03
  - Deadline for comments is 7/28/03
  - May have public information meeting on process
- Draft EIS schedule?
  - Would like to do joint notice period on DEIS w/ EFSEC
  - Then public hearing after public comment period (approx October)
  - County usually does 45 day notice period on DEIS
- Sharing of info. between ZRE & enXco
  - Shapiro, EFSEC, Huckell-Weiman; Clay will meet soon on info sharing protocols
  - enXco worried about data sharing
  - One consolidated public hearing for dept. agreement / complaints / rezone / dev. permit
- Probably joint hearing with Planning Commission and BOCC
  - Public testimony would be in front of both BOCC & PC
  - Decision from PC would be on all
  - BOCC would probably reconvene 2 weeks later to make it's decision
- Department Agreement
  - Comment period – no formal comments on what the issues are
  - Can meet after 8/1/03 to discuss possible mitigation/stipulation
  - TrendWest – Came up w/ a dept agreement & PC totally re-wrote it
- Staff Report
  - Will do staff report, but not really planner dates
  - May be sort of a shell for them (PC) to fill in
  - Either we can submit and they can modify it, or the county staff can do it.
  - Staffing agreement – not planning to bring in additional staff/consultants – just have Clay work overtime.

- Timeline:
  - Clay thinks Nov-Jan for decision
  
- Consistency Review Timeline
  - 30 day extension not enough, what is the deadline?
  - Need to adopt a draft schedule
    - Sept. 1<sup>st</sup> DEIS
    - Oct 1<sup>st</sup> Close of comment period (30 days)
    - Oct 31<sup>st</sup> – earliest date for public hearing
  - Need to give BOCC & PC time to review the record & comments
  - DP – would like to have schedule to present to EFSEC on 7/7/03
  - Our timeline to Gov. by Feb. 1, therefore EFSEC in hearing Jan/Feb
  
- Comprehensive Plan / Road Stds / Subdivision code / enXco / ZRE - All taking time on BOCC & PC docket
  
- JH- Can propose a schedule based on County approving Land use, but need to have time built in for approval
  
- County EIS for enXco expected Aug/Sept. publication
  - 30 day comment period joint DEIS comment w/ enXco.
  - JH- would like to have consultants' responses to comments before County make land use decision.
  
- How long will Shapiro take to respond to comments on DEIS?
  - Make this as quick as possible or could become a delay.
  
- Assumed schedule:
  - 9-1-03 DEIS & notice goes out
  - 9-30-03 Public comment period ends
  - Nov. 1<sup>st</sup> - 4 weeks for consultant to respond to comments
  - Nov. 10<sup>th</sup> - send record to BOCC & PC - set hearing dates
  - Dec. 10-15<sup>th</sup> – Planning commission hearings
    - BOCC listens to testimony
  - Jan 3<sup>rd</sup> – BOCC reconvenes 2-4wks – continues hearing probably later.
  - Take comments on PC, record & document in from of BOCC
  - Mid Jan. decision from BOCC

Distribution:

AY  
 CT  
 PS  
 DP

# ATTACHMENT 24

August 5, 2003  
Kittitas County Staffing and Consultant Agreement

RECEIVED

AUG - 4 2003

KITTITAS COUNTY  
CDS

RECEIVED

AUG 20 2003

KITTITAS COUNTY  
CDS

**STAFFING AND CONSULTANT AGREEMENT  
FOR  
KITTITAS VALLEY WIND POWER PROJECT**

THIS STAFFING AND CONSULTANT AGREEMENT FOR THE KITTITAS VALLEY WIND POWER PROJECT ("Staffing Agreement") is entered into this 5th day of August, 2003 by and between Sagebrush Power Partners, LLC ("Applicant") and Kittitas County, Washington (the "County").

**RECITALS**

A. WHEREAS, Applicant proposes to develop a Wind Energy Facility (Wind Farm) in Kittitas County, approximately twelve (12) miles northwest of Ellensburg on land within public and private ownership and covering approximately 5,000 acres (the "Project"), and Applicant has filed an application with the County seeking all required local land use and zoning changes for the Project (the "Application"); and

B. WHEREAS, The County, Applicant, and the public will invest considerable time in the County's processing and review for the Project; and

C. WHEREAS, the County's fees for permit processing do not at this time cover the full, reasonable cost of permit processing for the Project; and

D. WHEREAS, the County and Applicant intend that the County will process Applicant's Application for the Project (including both local and EFSEC processes) as promptly and expeditiously as other applications and consistent with applicable County Ordinances and state statutes;

NOW, THEREFORE, Applicant and the County agree as follows:

**AGREEMENT**

1. County Expense Reimbursement. In addition to paying an application fee, Applicant will reimburse the County for certain expenses incurred processing the Project Application and in reviewing and responding during the EFSEC process (the "Reimbursable Expenses"). Reimbursable Expenses shall include long distance telephone charges, copying, postage, travel expenses, and other extraordinary expenses incurred by the County in reviewing Applicant's Application plus the following hourly rate for the services of County staff in processing the Application:

CDS Director: \$ 60/hr;

Planner: \$ 50/hr;

Attorney: \$ 75/hr; and

Administrative and Clerical staff: \$ 25/hr.

The CDS Department will invoice Applicant monthly for these Reimbursable Expenses with details showing the services performed, the hours worked and other chargeable expenses as defined above (the "CDS Invoice"). Reimbursable Expenses shall not include any costs, charges or expenses (including attorneys' fees and costs) incurred by the County defending its permit decision related to the Project.

2. Community Development Services Staffing. If the Community Development Services Director determines that review of Applicant's Application requires staff time to the extent that the County is unable to timely process development applications for other CDS applications, the County can delay work on the Applicant's Application to serve those other applicants until outside consultants are retained pursuant

to paragraph 3 below. As an alternative to the County hiring outside consultants as provided below, the Director and Applicant may agree to add specific staff to the Department on such terms and conditions that are incorporated into an amendment to this Staffing Agreement.

3. Third-Party Contracts For CDS Staffing or Peer Review. The County and Applicant acknowledge that it may be more efficient for one or more County departments to enter into third-party contracts to obtain additional CDS staff to timely review development applications, including Applicant's Application; and that it may be necessary for the County to enter into a third-party contract with an independent peer review consultant to review the Development Agreement required for the Project pursuant to KCC Chapter 17.61A. Based on this, the parties agree:

a. To the extent that the County's review of the Applicants Application is directly hindering the County from timely processing development applications for other CDS applications, the County may hire additional staff to review Applicant's Application, and Applicant shall reimburse the County for any such additional staff at the rates specified in Section 2, above;

b. The County may retain an independent, third-party peer review consultant, of its choice and entirely at Applicant's expense, to review the Development Agreement for the Project. The County will not charge to the Applicant any third-party consultant costs for the County's participation in the EFSEC process, including without limitation any outside legal counsel costs.

Either the County or Applicant may suggest additional CDS staff and/or third-party contracts where appropriate. The selection of firms or individuals to provide such

third-party contract services and the cost of such services shall require approval of both the County and Applicant; notwithstanding anything in this Agreement to the contrary, the County has sole discretion regarding the selection and hiring of any additional CDS staff.

Applicant shall reimburse the County for all costs, charges and expenses related to any third-party contracts authorized in this Section 3. The County shall send Applicant invoices for any third-party contractor's services within fourteen (14) days of receiving the same (collectively the "Consultant Invoices").

County contracts with third-party contractors shall provide that the County will be liable for payments on such contracts only to the extent Applicant reimburses the County for contract expenses.

4. Reimbursement Fund.

Applicant shall deposit the sum of \$20,000 in an interest-bearing account maintained by the County (the "Fund"). The County will use the Fund to pay any CDS Invoice and/or any Consultant Invoices and then direct Applicant to reimburse the Fund in the amount of said invoices within twenty-one (21) days of Applicants receipt thereof. Applicant shall replenish the Fund every month as necessary to maintain it at \$20,000.

The County shall credit to Applicant any interest that accrues on the Fund. Upon termination of this Staffing Agreement or when the County finishes its review of the Application, whichever occurs first, and after the County pays any and all outstanding CDS Invoices and/or Consultant Invoices, the County shall promptly return any money remaining in the Fund to Applicant.

5. Annual Review and Fiscal Analyses. The County and Applicant acknowledge that the implementation of this Staffing Agreement may require adjustments in the procedures detailed above. The parties will meet as necessary to review the staffing levels and procedures required for the implementation of this Staffing Agreement. It is the parties' intent that the implementation of this Staffing Agreement shall be revenue neutral to the County and that the County will neither subsidize nor obtain excess revenue from the processing Applicants Application.

6. Dispute Resolution. The parties agree to use mediation, as necessary, to attempt to resolve any dispute under this Staffing Agreement. In the event mediation fails, venue for any action under this Staffing Agreement shall be in Yakima County Superior Court.

7. Compliance With Applicable Law. The processing of Applicant's Application is governed by the terms of the Kittitas County Code and state law. This Staffing Agreement provides for reimbursement to the County, but does not require the County to approve or issue any permits for the Project.

8. Amendments. Amendments to this Staffing Agreement shall be in writing, approved by the Board of County Commissioners, and signed by the parties.

9. Term of Agreement. The term of this Staffing Agreement shall be retroactive to January 13, 2003 and shall continue for one (1) year from the date first written above, but may be terminated by Applicant as provided herein. The scope or term of this Staffing Agreement may be amended pursuant to paragraph 7 above. Applicant shall give the County at least thirty (30) days written notice of its intent to extend, revise or

terminate this Staffing Agreement. The County and Applicant will then meet to address such issues.

**BOARD OF COUNTY COMMISSIONERS KITTITAS COUNTY**

  
\_\_\_\_\_  
Max Golladay, Chairman

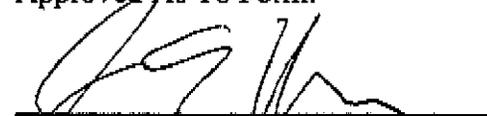
  
\_\_\_\_\_  
Perry Huston, Vice Chairman

  
\_\_\_\_\_  
Bruce Coe, Commissioner

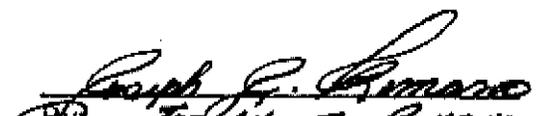


*Handwritten note:* [Signature] of the Board

Approved As To Form:

  
\_\_\_\_\_  
(Deputy) Prosecuting Attorney

**SAGEBRUSH POWER PARTNERS LLC, a Washington Limited Liability Company**

  
\_\_\_\_\_  
Joseph E. Romano  
Its: CEO & PRESIDENT

# ATTACHMENT 25

October 15, 2003  
Summary of Meeting with Kittitas County  
Regarding County Review of Application

## 10/15/03 Meeting Summary

1. Attendees: Jim Hurson, Clay White, Chris Taylor and Darrel Peeples
2. Place: Planning Staff Conference Room, Ellensburg, WA.
3. Topic: County Review of Kittitas Valley Wind Power Project (KVVPP)
4. Discussion:

a. **Content and format of the Development Agreement.**

The Mountain Star development agreement probably is not the best model to use for content. However the general format may be appropriate. County staff envisions the agreement for KVVPP will be shorter with fewer attachments than for Mtn. Star. It was ultimately resolved that the mitigations set out in the DEIS may be a good way to provide the substantive content. The Applicant will check with County staff for mitigations coming under subject areas of particular county concerns such as ground and air transportation (probably one of the County's most important issues), fire etc. The Development Agreement, if approved by the County, would provide the basis for a stipulation submitted to EFSEC resolving all of the County's issues.

Other types of issues to be covered by the Mitigation Agreement:  
Term, maximum tower heights, setbacks (roads, property lines and houses), color, noise, fire, avian/wildlife impacts, storm water, spill containment, lighting, number of turbines, socioeconomic impacts, local property taxes (personal vs. real property – Iris/DOR issue) and decommissioning (type of fund, amount etc.- this is an EFSEC issue that is finalized prior to construction)

Many of these items are things EFSEC will consider their primary areas of concern (particularly avian, wildlife, storm water, etc.) and may be a bit protective of regarding the approval of stipulations.

b. **Responses to DEIS Comments**

County expressed a desire to have responses to comments on the DEIS to review prior to commencement of its hearing process. EFSEC does not produce the response to comments until after its hearings, when they are published along with the final EIS. County wanted these responses to meet SEPA requirements for identifying issues. This may take 6 weeks or more after the end of the comment period. Expect a lot of repetitive questions.

c. **County Hearing Process Schedule**

County staff outlined their expectations regarding the schedule for County review of the KVVPP land use applications based on the expected release date for the DEIS. This schedule is summarized in the attached table.

# ATTACHMENT 26

October 15, 2003  
County Timeline for Review  
Based on Meeting 10/15/2003

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

| <b>Date</b> | <b>Action</b>  |
|-------------|--|
| 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"> <li>• If acceptance of the DEIS is <u>NOT</u> appealed - Preparation for Land Use Hearing (30 days)</li> <li>• 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.</li> </ul> |
| 4/9/03      | <ul style="list-style-type: none"> <li>• If acceptance of the DEIS <u>IS</u> appealed - Preparation for BOC Appeal Hearing (42 days)</li> <li>• BOC holds Appeal Hearing (1-5 days of hearings) then proceed to steps above at same hearing (Planning Commission, public testimony, etc.)</li> </ul>   |
| 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.  |

# ATTACHMENT 27

October 30, 2003

Letter from C. Taylor to C. White

Re: Process and Schedule for Review of Application



[www.zilkha.com](http://www.zilkha.com)

Ellensburg Offices  
222 Fourth Street  
Ellensburg, WA 98926  
Phone: 509-962-1122  
Fax: 509-962-1123

Northwestern Regional Office  
210 SW Morrison  
Suite 310  
Portland, OR 97204  
Phone: 503-222-9400  
Fax: 503-222-9404

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

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 stated 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  
Sagebrush Power Partners

## ATTACHMENT 28

November 05, 2003  
E-Mail from C. White to C. Taylor  
Comments regarding Letter dated Oct. 30, 2003

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

**From:** Clay White [mailto:ClayW@co.kittitas.wa.us]

**Sent:** Wednesday, November 05, 2003 12:39 PM

**To:** Chris Taylor

**Subject:** October 30th, 2003 letter

Chris -

I have received your letter dated October 30th, 2003 and have the following comments.

As discussed with you in our meeting on October 15th, 2003, Kittitas County cannot commit to specific project timelines because we have no control of the environmental documents being prepared by Shapiro and EFSEC. The general timelines given to you are based on numerous assumptions namely being when we will receive the DEIS, its adequacy, and the time to get a response to DEIS comments. KC has not seen a copy of the DEIS being prepared as we were not included as a reviewing party. This makes it impossible to attest to the completeness or amount of comment KC will have on this document.

As I have relayed to you since you choose to submit your application to EFSEC in January, there is a permit process Zilkha must complete in order to be consistent with local land use and zoning regulations. By suggesting that we eliminate portions of the review process, you are asking KC to break state and local land use laws. If you consult with your attorneys, I am sure they will tell you the same thing.

In reviewing the application process, KC has done nothing but help speed up the process so we can get this project to public hearing as quickly as possible. When it became apparent that EFSEC and Shapiro were producing an EIS that would not be adequate for our review, we notified all parties immediately and are even having our consultants expedite the preparation of these materials.

The only portion of this process that we have had control over is the Notice of Application comment period. Lets remember that it took Zilkha 6 months to submit an application to KC (after submitting an application to EFSEC) and that we sent out Notice of Complete application within a week of your application being deemed complete.

At this time I am waiting for the DEIS to be issued. I cannot speed up its release because EFSEC is preparing it along with Shapiro. Once the 30 day comment period ends we will wait for the response to comments on the adequacy of the DEIS to be issued so we can move into the public hearing process. I have no control over that process. I can assure you that I am going to move your project along as quickly as possible for the portion that KC has authority over. I cannot eliminate steps that would cause KC to be out of compliance with State and Local Law. If you consult with counsel I am sure they will relay that avoiding processes we are bound to would not benefit Zilkha or KC.

Sincerely,

Clay White  
Planner II  
Kittitas County Community Development Services  
(509) 962-7506  
clayw@co.kittitas.wa.us

## ATTACHMENT 29

January 19, 2004  
Letter from C. Taylor to A. Walker  
Request for Assistance from Kittitas Chamber



www.zilkha.com

Ellensburg Offices  
222 Fourth Street  
Ellensburg, WA 98926  
Phone: 509-962-1122  
Fax: 509-962-1123

Northwestern Regional Office  
210 SW Morrison  
Suite 310  
Portland, OR 97204  
Phone: 503-222-9400  
Fax: 503-222-9404

Alan Walker  
Executive Director  
Ellensburg Chamber of Commerce  
609 N. Main St.  
Ellensburg, WA

January 19, 2004

Dear Alan:

As you know, Zilkha Renewable Energy is a member of the Chamber of Commerce and hopes to invest up to \$400 million dollars in Kittitas County to develop our two proposed wind power projects. Zilkha has invested considerable time and resources to obtain a permit for our proposed Kittitas Valley Wind Power Project.

The Energy Facility Site Evaluation Council has recently issued a DEIS for the project, which is typically the last step before the adjudicated hearings process begins. However, at last week's EFSEC hearing, Kittitas County presented a proposed process (in the form of a flow chart) for the County's review of the local land use aspect of the project that would require at least another six months or more for the County to reach its final decision. In fact, it could be next fall before a County zoning decision is rendered. This timeline is incompatible with the market realities we face and could jeopardize the project's success.

After nearly two years of discussions with the County, we appear to have reached an impasse. While we believe the County's projected timeline and process are unreasonable, we would like to attempt to reach a compromise. To that end, we would greatly appreciate the Chamber's help in scheduling a meeting to discuss issues and alternatives. Ideally this meeting will be limited to me, on behalf of Zilkha and Clay White, County Planner on behalf of the County. If the County insists on having its attorney present, then we will as well, but we don't believe this is necessary.

We see the Chamber's role in this meeting as, 1) inviting the parties to attend for the purpose of discussing issues and potential solutions, and 2) providing a meeting space, such as the Driver House board room.

Ideally this meeting will take place on Monday February 26, but could take place on another day the week of the 26th.

We greatly appreciate your consideration of this request.

Sincerely,

Chris Taylor  
Project Development Manager  
Zilkha Renewable Energy

# ATTACHMENT 30

January 29, 2004  
Letter from A. Walker to C. Taylor  
Response to request for assistance

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

**From:** Alan Walker [mailto:alan@ellensburg-chamber.com]

**Sent:** Thursday, January 29, 2004 4:22 PM

**To:** Chris Taylor

**Subject:** County Response

Hi Chris,

I spoke to Clay White, County Planner, about arranging a meeting with you and him. He said that you are welcome to contact him at anytime, and a special meeting would not be necessary. They, the County, have your application and must follow procedures as mandated by the State. Clay indicated there was really nothing they could do to shorten the amount of time required to process the application.

Jim Hurson also called and reiterated the same.

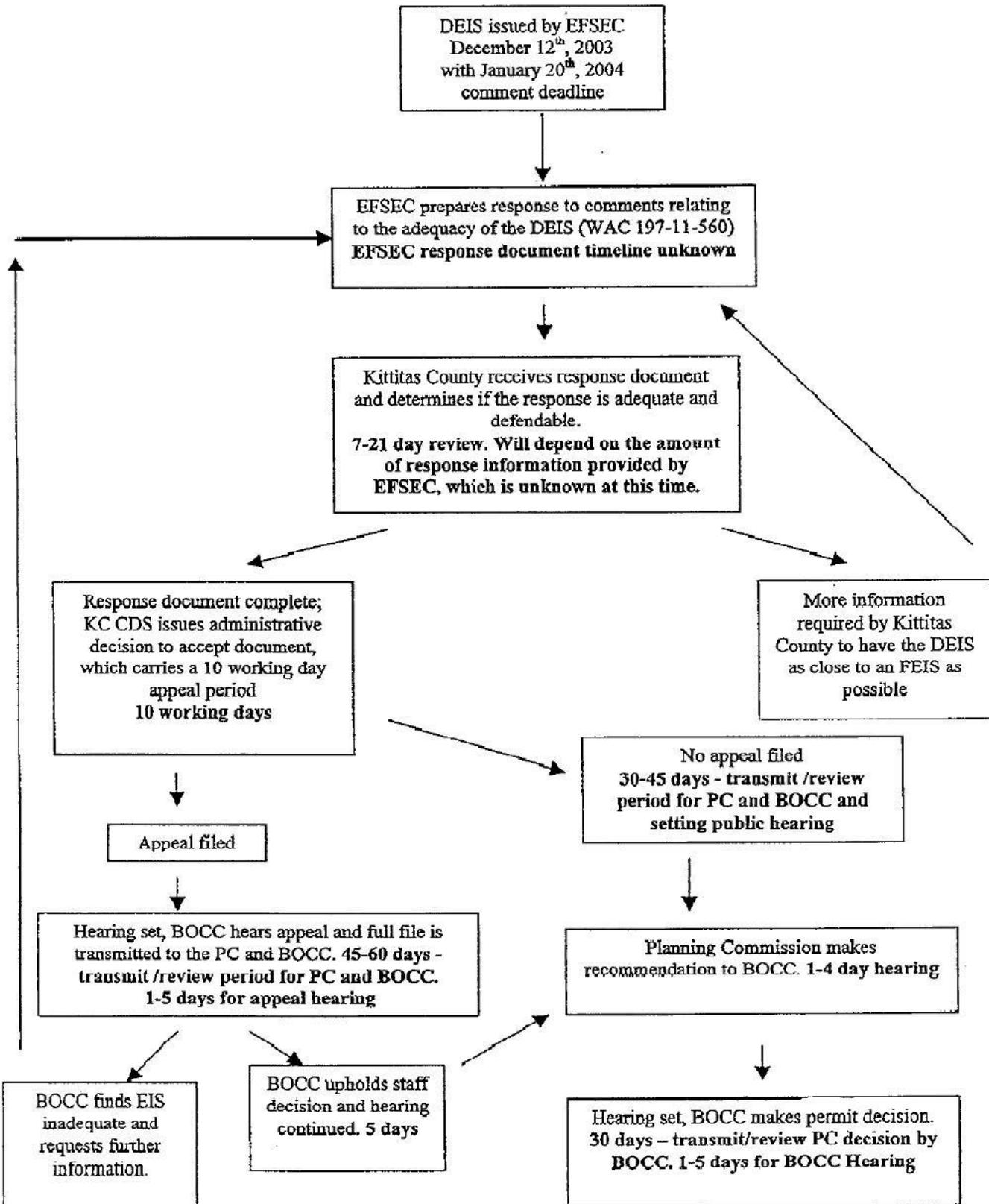
Both wanted me to let you know they will talk with you directly at any time regarding the application and process.

Alan

Ellensburg Chamber of Commerce  
609 North Main Street  
Ellensburg, WA 98926

## Exhibit 2

Possible timeline for processing the KV Wind Power project.



## Exhibit 3

## **Inconsistencies Between enXco’s Desert Claim DEIS and Kittitas County Planning Department Comments to Zilkha’s Kittitas Valley Wind Power Project DEIS**

Following is a list of comments submitted by the Kittitas County Planning Department regarding the Kittitas Valley Wind Power Project DEIS (KV) contrasted with information contained in the Desert Claim Wind Power Project DEIS (DC) prepared by the Kittitas County Planning Department (KCPD). There are several types of inconsistencies:

- Kittitas County Planning Department is requesting complete mitigation and/or detailed mitigation plans before Kittitas Valley Wind Power Project is operational, whereas no mitigation was required for Desert Claim Wind Power Project for the same types of impacts (See items 1, 2, 6, 15, 18);
- The same issue is identified in both projects, but no factual backup was found to be necessary for Desert Claim Wind Power Project whereas Kittitas County Planning Department is asking for supplementary and/or more detailed documentation/study from Kittitas Valley Wind Power Project (See items 5, 8, 13, 14, 16);
- In the DEIS’s treatment of a single configuration (“high impact scenario”), Desert Claim Wind Power Project was found to be satisfactory but the Kittitas County Planning Department is insisting that Kittitas Valley Wind Power Project present details for two additional scenarios (See items 6, 8, 10, 11, 17, 18);
- Negative impacts are specified by Desert Claim Wind Power Project in its DEIS, while more detailed documentation/study is requested for Kittitas Valley Wind Power Project on the same topic despite the fact that minimal or no negative impact was found due to differences in location or configuration (See items 8, 10, 11);
- Potential impacts are specified for Desert Claim Wind Power Project in its DEIS, however no mitigation plan was required or supporting facts presented (See items 4, 5, 8, 10, 12);
- Factual support for potential impacts provided in Kittitas Valley Wind Power Project DEIS was not required for similar impacts in Desert Claim Wind Power Project DEIS (See items 2, 3, 13, 18, 19).

**DC** – Desert Claim Wind Power Project, enXco

**DEIS** – Draft Environmental Impact Statement

**KCPD** – Kittitas County Planning Department

**KV** – Kittitas Valley Wind Power Project, Zilkha

**EFSEC** – Energy Facilities Site Evaluation Council

**FAA** – Federal Aviation Administration

## Mitigation Measures

1. *“WAC 197-11-655(3)(b) notes that mitigation measures legally adopted by the lead agency “need not be identical to those discussed in the environmental document.” This allows the lead agency flexibility to revise or expand the mitigation measures presented in the EIS. It is often not possible to anticipate in an EIS every mitigation that will ultimately be required by the responsible jurisdiction.”*  
DC DEIS Page 1-45: Mitigation Measures

**Clay White of the Kittitas County Planning Department has requested that detailed mitigation plans for the Kittitas Valley Wind Power Project (eg, TV interference, shadow flicker, wetlands, etc.) be developed in advance of the issuance of the Project EIS. However, the Desert Claim Wind Power Project DEIS issued by Kittitas County does not provide any such detailed mitigation plan, and reserves the right for the Lead Agency (Kittitas County) to modify any mitigation measures as they see fit.**

## Communications: Television and Radio Interference

2. *“Mitigation measures for schools, ... and communications services are not necessary, given the insignificant impacts identified for these services.”*  
DC DEIS Page 3-277: Section 3.14.5.3; Mitigation, Other Services

**No mitigation measures or plan for communications impacts were proposed for the Desert Claim Project. No microwave or TV interference studies have been presented or proposed for the Desert Claim Project. KCPD is requiring a mitigation plan prior to operation of Kittitas Valley Wind Power Project.**

Clay White comments to KV DEIS, Section 1.75 and 1.76, Television and Radio Interference: *“In these sections it states that the potential effect of the project is not known but the applicant will work with the affected people. How will the Applicant work with the affected people? How long do they have to work out the problem? Will the project be shut down until issues are resolved? Will EFSEC be involved in resolving individual issues with affected landowners? A plan should be put in place prior to operation, and possible mitigation should range from the application paying for satellite or cable services to removing towers that effect landowners. There must be specifics in place and the DEIS does not offer sufficient mitigation.”*

3. *“Tall structures, such as wind turbines... have potential to create interference with communications signals.”*  
DC DEIS Page 3-275: Section 3.14.2.5; Communications

**No microwave or TV interference studies have been presented from the Desert Claim Project though a potential impact was identified in their**

**DEIS. Such studies were completed for the Kittitas Valley Wind Power Project and were presented in the KV DEIS.**

4. *“The wind turbines would be located 1000 feet from the nearest residence. This distance should provide sufficient separation to eliminate (TV) interference.”*  
DC DEIS Page 3-154: Section 3.8.2.2; Health & Safety, Electromagnetic Interference

**No evidence is offered to support this statement.**

## **Energy and Natural Resources**

5. *“Power produced by the wind projects would also be responsive to the identified needs of regional utility providers, including Puget Sound Energy.”*  
DC DEIS Page 1-34: Energy and Natural Resources

**Both enXco and Zilkha are seeking to supply the same Northwest utility demands.**

Clay White comments to KV DEIS p.1-8 and 1-9, Section 1.4.3 No Action Alternative: *“...This section also refers to the “region’s” need for power. Since the DEIS earlier had shown that this region consists of Washington, Oregon, Idaho, and Montana, can we once again assume that all power from this project will be sold within this 4 state area? If so, it contradicts earlier statements from Zilkha that power is a commodity and will be sold to any buyer who meets their needs.”*

## **Air Transportation: Lighting, Glare, Shadow Flicker, Traffic Patterns**

6. *“A number of turbines (33 total)...would exceed the obstruction standards of paragraph 77.23(a)(2), which would require the FAA to conduct an extended study of the proposed project.”*  
DC DEIS Page 3-253: Section 3.13.2; Air Transportation, Impacts

**This extended study has not been started yet for the Desert Claim Project which lies in the flight path of Bower Field (see 9), yet Kittitas County Planning officials have urged further extensive FAA review of the Kittitas Valley Wind Power Project though Zilkha has been working with the FAA to review the general Project layout.**

Clay White Comment on KV DEIS Section 3.10.2: *‘Since the DEIS lists 3 scenarios for this project, all 3 will have to be evaluated. This should have been completed prior to DEIS issuance since this letter from the FAA was issued in 2002 and the project is significantly different at this time’.*

Paul Bennet Comment to KV DEIS: *“Tower height – The original (FAA) application stated the towers would be approximately 410 feet tall from ground to fully extended*

*blade tips. The studies completed by the FAA were for towers with a total height of 350 feet, and although the FAA has stated these structures do not exceed obstruction standards, the FAA did not have the opportunity to review two of the three proposals. Since three alternatives are proposed, then the aeronautical studies for all three alternatives should be complete prior to ending the comment period.”*

7. “...the number of structures to be lit within a multi-turbine energy project is left to the discretion of the FAA Region charged...”

DC DEIS Page 3-257: Section 3.13.2.2; Marking and Lighting Issues

**No study has been reviewed, or is even in the process of being reviewed by the FAA for the Desert Claim Project.**

8. “As discussed in Section 3.13.2, development of the Desert Claim project would create a potential conflict with the protected airspace associated with the visual flight rule (VFR) traffic pattern for Bowers Field, as 27 of the proposed turbines would intrude on that protected airspace.”

DC DEIS Page 1-41: Air Transportation

**This section proposes shifting the approach of flights at Bower Field, directing air traffic south of the airport, closer to Ellensburg. No FAA study was done. Desert Claim proposal is for an “envelope”, yet only one scenario or configuration has been proposed and evaluated for the DC DEIS. The Desert Claim Project poses air traffic problems for the Ellensburg airport (Bowers Field) while the Kittitas Valley Project poses none of these risks. Yet KCPD is very critical of the treatment of the air transportation section in the Kittitas Valley Wind Power Project DEIS.**

Clay White comments to KV DEIS pages 3.9-47 and 3.10-16 Aviation Hazards: “*In the first paragraph the DEIS refers to a letter from the FAA stating this project will not interfere with aviation operations. After reviewing that letter it clearly states that the information they are giving is based off of towers with a maximum height of 350 feet above ground. Since the turbines may extend up to 410 feet above ground the letter from FAA to Zilkha Renewable Energy isn’t valid and more information should be obtained. Further, when new information is obtained for the DEIS response; it should include information on all 3 scenarios as they all must be evaluated.*” \*Paul Bennett makes similar comment.

9. DC DEIS DC DEIS Page 3-259 Section 3.13.5.1; Mitigation, VFR Traffic Pattern

**There is no plan in place to resolve conflicts with air traffic patterns resulting from the Desert Claim Wind Power Project.**

10. “*Experience with FAA reviews of prior lighting plans indicates that this configuration should meet FAA requirements...*”

DC DEIS Page 3-219: Section 3.10.2.3; Light & Glare

**The lighting plan proposed in the Desert Claim DEIS is speculative only, based on consultant's previous experience. The FAA has not reviewed or evaluated the site plan. Desert Claim DEIS included no correspondence with FAA and should not be considered final. Only one configuration was evaluated by DC DEIS, though KCPD is requiring Kittitas Valley Wind Power Project to evaluate three scenarios.**

Clay White comments to KV DEIS, Section 3.9 Visual Resources: *"The information on page 3.9-47 that looks at lighting is invalid based upon the information in the letter from the FAA. Further, when new information is obtained for the DEIS response; it should include information on all three scenarios as they all must be evaluated."*

*"Please see Section 3.13.2.2 of the DEIS for the Desert Claim Wind Power Project. In that section you will find information and maps showing the proposed lighting plan. With that information Kittitas County and interested parties are better able to gauge the impact such lighting will have."*

Clay White comments to KV DEIS Section 3.10.2: *'Since the DEIS lists 3 scenarios for this project, all 3 will have to be evaluated. This should have been completed prior to DEIS issuance since this letter from the FAA was issued in 2002 and the project is significantly different at this time.'* \*Paul Bennett makes similar comment.

11. *"The turbines would all be 393 feet in height."*

DC DEIS Page 3-253: Section 3.13.2; Air Transportation, Impacts

**Only the tallest wind turbine generators were evaluated even though enXco has indicated that they are considering other turbine sizes and heights in their application. No analysis of smaller wind turbine generators or different turbine locations were proposed. The Kittitas Valley Wind Power Project does not have the same proximity to the airport as Desert Claim.**

Clay White comment to KV DEIS Section 3.10.2: *'Since the DEIS lists 3 scenarios for this project, all 3 will have to be evaluated. This should have been completed prior to DEIS issuance since this letter from the FAA was issued in 2002 and the project is significantly different at this time'*.

Paul Bennet comments to KV DEIS: *"Tower height – The original (FAA) application stated the towers would be approximately 410 feet tall from ground to fully extended blade tips. The studies completed by the FAA were for towers with a total height of 350 feet, and although the FAA has stated these structures do not exceed obstruction standards, the FAA did not have the opportunity to review two of the three proposals. Since three alternatives are proposed, then the aeronautical studies for all three alternatives should be complete prior to ending the comment period."*

12. *“...distance between lit structures should be no more than 3,000 feet in a straight line.”*

DC DEIS Page 3-258 Section 3.13.2.2; Marking and Lighting Issues

**What is the basis for this distance? Zilkha was told by the FAA regional office that 1,000-1,400 feet was needed for intervals between lights.**

### **Site Alternatives**

13. *“The Wild Horse site is not available to enXco.”*

DC DEIS Page 1-6: Section 1.5.2 Alternative 1: Wild Horse

**The same applies to the Desert Claim site which is not available to Zilkha.**

Clay White comments to KV DEIS page 1-8, Section 1.4.2, Alternative Wind Turbine Locations: *“Paragraph 1 states that the applicants’ site is the only possible location for a wind power project and other locations have been dismissed because they do not meet the criteria a wind power must meet. This statement is untrue as Kittitas County is currently processing a wind power project for enXco Inc. and Zilkha is proposing a second project within Kittitas County.”*

14. *“...potential alternative sites identified and reviewed in this draft EIS are not available or practicable to the Desert Claim applicant and, therefore, are not ‘reasonable alternatives’ pursuant to SEPA.”*

DC DEIS Page 2-40: Section 2.3.1 Process for Identifying Off-Site Alternatives

**The same applies to the Desert Claim site which is not available to Zilkha.**

Clay White comments to KV DEIS page 1-8, Section 1.4.2, Alternative Wind Turbine Locations: *“Paragraph 1 states that the applicants’ site is the only possible location for a wind power project and other locations have been dismissed because they do not meet the criteria a wind power must meet. This statement is untrue as Kittitas County is currently processing a wind power project for enXco Inc. and Zilkha is proposing a second project within Kittitas County.”*

### **Operation Impacts: Shadow Flicker, Tourism and Aesthetics**

15. DC DEIS Page 1-55: Shadow Flicker

**This section includes no suggestions to remove wind turbine generators causing flicker and no proposed requirement for enXco to complete mitigation plans before the Desert Claim Project becomes operational.**

Clay White comments to KV DEIS p.3.4-22, Measure to Minimize Shadow Flicker: *“A possible mitigation measure should include removing any towers that will cause shadow flicker effects at any receptor. Please make sure that all towers in each of the 3 scenarios are identified to show which are causing shadow flicker. If towers are not removed mitigation should be added that all improvements to effected homes should be completed before the project becomes operational.”*

16. *“While is assumed that the Desert Claim project would draw tourists, the level of future tourist activity cannot be specifically predicted.”*

DC DEIS Page 3-240: Section 3.12.2.2; Operation Impacts

**There is no specific number of tourists predicted for the Desert Claim Project or for the Kittitas Valley Wind Power Project, yet additional information is required by KCPD for the KV DEIS.**

Paul Bennet comments to KV DEIS: *“You state that this is an unknown at this time. Although the specifics are unknown there have been numerous wind farms built and the impact of tourism are known. Identify what mitigation was included at these locations and see how they may apply to this wind farm and then suggest trigger points for implementation of those mitigations. Saying we don’t know what the impacts are makes it difficult to accurately assess the impacts.”*

17. DC DEIS Page 3-211 & 3-212: Section 3.10.2.2; Operation, Aesthetics

**It appears that only the largest wind turbine generator scenario was considered in the visual impacts analysis for the Desert Claim DEIS whereas three scenarios must be considered for the Kittitas Valley Wind Power Project DEIS.**

Clay White comments to KV DEIS, Section 3.9 Visual Resources: *“After reviewing the information in this section it seems all of the information is based off studying 1 of the possible 3 scenarios the applicant is proposing. All 3 scenarios must be studied in depth so that a valid determination may be made as to whether this project will have a significant adverse impact. All discussion, tables and mitigation should be put together for each scenario.”*

## **Cumulative Impacts: Vegetation and Wetlands**

18. Vegetation - *“Construction of Desert Claim project facilities would result in the permanent loss of 78 acres of existing vegetative cover, including approximately 36 acres of shrub-steppe and 4 acres of grassland lithosol. Based on the limited extent of vegetation loss resulting from the Desert Claim project, in the aggregate for the 5,237-acre project area and with respect to specific communities, these impacts would not result in the potential for significant cumulative vegetation impacts in the local area.”*

Wetlands – *“Wetlands are rare in the project areas for both the KV and WH wind power projects, and these projects would have negligible to nonexistent impacts to wetlands.”*

And, *“If turbine and road locations cannot be shifted through the micro-siting analysis to avoid permanent impacts to wetlands, a specific mitigation plan would be developed in conjunction with the U.S. Army Corps of Engineers, Department of Ecology, and Kittitas County.”*

DC DEIS Page 1-30 & 1-31: Cumulative Impacts

**Desert Claim DEIS finds no impact on project area vegetation and no details have been provided regarding specific wetland mitigation plans. However KCPD insists on extensive mitigation for vegetation and wetlands for the Kittitas Valley Wind Power Project.**

Clay White comments to KV DEIS p.1-10, Section 1.7.1 Wetland Impacts and Mitigation: *“Within this section it states ‘the specific mitigation requirements to compensate for loss of wetlands and water resources at the project site is considered an issue of uncertainty that has yet to be resolved.’ That statement is unacceptable, as the reason for completing an EIS is to find out the amount of impact the proposed action will have within the project area. Since the applicant is now proposing 3 different possible project alternatives all 3 should be evaluated. As a reference tool I would refer to section 3.4.2.2 of the DEIS prepared for the DC Wind Power Project. That section fully addresses the possible impacts to wetlands within the project area and possible mitigation measures. This must be completed within the KV DEIS, as just stating that this is an unresolved issue does not allow for proper review of the project and possible impacts the project may have on the environment. This should not be difficult to complete since the amount of wetlands within the project are minimal.”*

## **Health and Safety: Mechanical Hazards**

19. *“The applicant has not made a final selection of the exact turbine/tower system to be used in the proposed action, but General Electric Wind Energy (GEWE) systems of 1.5 megawatt (MW) rated output have been identified as the most likely selection...For Desert Claim, the applicant has identified the maximum turbine envelope as having a rotor diameter of 80 meters (262 ft.) with a tower height of 80 meters (262 ft.). The GEWE 1.5s/1.5sl with either rotor and the 64.7 m or 80 m tower would fit within this maximum turbine envelope. The following discussion refers to systems and nomenclature described in the technical descriptions and specifications for the GEWE 1.5s/1.5sl wind turbine generators...”*

DC DEIS Page 3-144: Section 3.8.2.1; Health & Safety, Mechanical Hazards

**The Desert Claim DEIS has identified the maximum turbine envelope as having a rotor diameter of 80 meters with a tower height of 80 meters and an example for hazards is made of a wind turbine generator within**

**this maximum (the GWWE 1.5s/1.5sl). This is the same analytical approach as that presented in the Kittitas Valley Wind Power Project DEIS. However, in the DC DEIS, no specific scenarios are modeled, whereas in the KV DEIS, a bottom, middle and upper scenario are presented.**