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

8 In the Matter of  
9 Application No. 2004-1

10 WIND RIDGE POWER PARTNERS, LLC.  
11 WILD HORSE WIND POWER PROJECT  
12  
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F. STEVEN LATHROP'S REPLY  
BRIEF IN SUPPORT OF THE  
PETITION FOR  
INTERVENTION  
OF F. STEVEN LATHROP

14 Mr. Lathrop has met the requirements of WAC 463-30-400 for intervention. Applicant  
15 and third party briefs in opposition to Mr. Lathrop's Petition for Intervention fail to respond in  
16 any way that Mr. Lathrop's involvement will prejudice their respective rights or interests or  
17 unduly delay the proceedings. They attempt instead to engage this Council in a discussion of the  
18 of the merits of the interests involved which is premature, and attempt to place a burden on Mr.  
19 Lathrop that is not applicable.

20 **I. Mr. Lathrop Has an Actual Legal Interest**

21 Opponents assert that Mr. Lathrop must prove that he is or will be "aggrieved or  
22 adversely affected" as a consequence of agency action in order to establish his right to intervene.  
23 However, WAC 463-30-400 provides, in part:

24 ... in the discretion of the council, to any person having an interest  
25 in the subject matter and whose ability to protect such interest *may*  
26 be otherwise impaired or impeded. ... and shall establish with



1            *Coughlin* is a SEPA case, completely inapplicable to the issue before the Council. The  
2 case dealt with whether an individual had standing to invoke a court's inherent and constitutional  
3 authority to review the adequacy of an EIS. *Coughlin*, 27 Wn. App. at 893. If Mr. Lathrop were  
4 attempting to convince a Superior court to invoke such authority then the case might be relevant  
5 and there might be a requirement to show a direct adverse effect on him from the proposed  
6 action. This Council has no such inherent authority.

7            The *Trepanier* case is inapplicable as it also deals with a SEPA appeal and whether Mr.  
8 Trepanier had standing to appeal a SEPA determination. The *Trepanier* court found the  
9 Petitioner had not proven "injury in fact" requiring proof by facts that the Petitioner would suffer  
10 an adverse impact and that hypothetical injury or conjecture were not enough under those  
11 circumstances. The *Trepanier* court did find that the first prong of the two-part test had been met  
12 as Petitioner did show he was seeking to protect an interest within the zone of the interests at  
13 issue. The cited cases are contrary to the standard set forth in WAC 463-30-400.

14            At this stage this Council is not dealing with an issue of the threshold for standing to  
15 invoke the constitutional judicial authority of an agency determination, but merely deciding the  
16 issue of whether the threshold has been met for Mr. Lathrop to intervene in the initial stages of  
17 the administrative hearing. Evidence sufficient to prevail is not required to intervene, merely an  
18 assertion of his interests that may be affected. The cited statute and cases do not apply even by  
19 analogy.

20            If the council were to use and apply this new standard, no party, let alone a citizen such  
21 as Mr. Lathrop, would be able to intervene. No citizen group such as Friends of Wildlife and  
22 Windpower would be able to intervene as they can't show injury in fact. The WAC sets an  
23 intentionally low threshold for intervention to allow all interested parties an opportunity to  
24 participate. Looking at the council's decisions on intervention in the Olympic Pipeline  
25 application (Exhibit A to Wind Ridge Power Partner's Brief in Opposition to F. Steven Lathrop's  
26 Petition for Intervention) it is clear the council did not hold those intervenors to the standard to  
which the Applicant now seeks to hold Mr. Lathrop. Mr. Lathrop may be philosophically  
opposed to wind power but he clearly has a legal interest that may be affected. Mr. Lathrop's  
interest is no different than Friends of Wildlife and Windpower. The council in Olympic

1 Pipeline went on to distinguish between economic interests, environmental interest, and property  
2 interests. The council noted that those with a property interest had “demonstrated a legal interest  
3 in the possession, beneficial use, and quiet enjoyment of their real property”. Mr. Lathrop has  
4 met that standard just as any other citizen.

5 For Mr. Lathrop to intervene he is required by WAC 463-30-400 only to *assert* specific  
6 interests that *may* be adversely affected and he has done so. Mr. Lathrop should be permitted to  
7 present his evidence at the hearing. Mr. Lathrop has relevant evidence that this Council should  
8 consider with regard to the ultimate determination before it. Whether he should be permitted to  
9 be heard is all that is before the council at this time. The council should not decide the issues on  
10 the merits prematurely as urged by Applicants.

11 CR 24 addresses, at minimum, intervention at the inception of a proceeding in Superior  
12 Court. In keeping with the principals of justice that dictate involvement of all interested parties  
13 for the sake of judicial economy and full and complete litigation of the issues the threshold for  
14 initial intervention is lower than that required upon appeal after the merits have already been  
15 litigated. Should this Council find that CR 24 is not directly applicable in this case, it is certainly  
16 more applicable by analogy than the authority under the APA, *Coughlin*, and *Trepanier*, as cited  
17 by Applicants.

### 18 **III. Conclusion**

19 Mr. Lathrop is a property owner within view of the proposed wind power project site and  
20 is a citizen of the county concerned with the long range impact on him and his property by  
21 reason of this project. He asserts expert testimony that siting of wind farms in his view, as  
22 proposed, would adversely affect the value and full enjoyment of his property and set a precedent  
23 that will adversely impact his property and him. Mr. Lathrop’s interests are not speculative or  
24 remote. They are direct and specific. Diminution of value of this investment and risk of future  
25 similar projects would be a substantial effect. Mr. Lathrop should be permitted to fully intervene  
26 to bring these issues before this Council to be considered in its ultimate determination.

There has been no showing or allegation that Mr. Lathrop’s involvement would prejudice  
the other parties in any way or unduly delay the proceedings further. Indeed Mr. Lathrop’s

1 | declaration illustrates his lengthy involvement with such projects, his vast knowledge in the area  
2 | and his ability to fully and completely participate in these proceedings in a timely and  
3 | meaningful manner. Other parties have been permitted to intervene to assert similar but  
4 | competing arguments. Mr. Lathrop's interest should be heard as well.

5 |           Respectfully submitted this \_\_\_\_ day of October, 2004

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7 | \_\_\_\_\_  
8 | Jeff Slothower WSBA #14526  
9 | Attorney for F. Steven Lathrop

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