

KITTITAS VALLEY WIND POWER PROJECT - In re: Application No. 2003-01 - Vol. □

May 19, 2003
KITTITAS VALLEY WIND POWER PROJECT - In re: Application No. 2003-01

September 30, 2009

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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re: Application No. 2003-01)
)
KITTITAS VALLEY WIND POWER PROJECT) LAND USE HEARING
)
Site Certification Agreement) PAGES 1 - 62
_____)

A public hearing in the above matter was held in the presence of a court reporter on May 1, 2003 at 6:00 p.m. at the Kittitas County Fairgrounds in Ellensburg, Washington, before Energy Facility Site Evaluation Council Members.

* * * * *

(Exhibit Nos. 1 through 16 marked for identification and admitted into evidence.)

CHAIR LUCE: The meeting will come to order. This is a hearing in the matter of Application No. 2003-01, the Kittitas Valley Wind Power Project. Subject to this evening's meeting is a Land Use Consistency Hearing, and I would ask Mr. Fiksdal to call the roll.

MR. FIKSDAL: Department of Community Trade and Economic Development.

MR. FRYHLING: Dick Fryhling is here.

MR. FIKSDAL: Department of Ecology.

MR. CARELLI: Charles Carelli.

MR. FIKSDAL: Department of Fish and Wildlife.

MS. FENTON: Jenene Fenton.

MR. FIKSDAL: Department of Natural

1 Resources.

2 MR. IFIE: Tony Ifie.

3 MR. FIKSDAL: Utilities and Transportation
4 Commission.

5 MR. SWEENEY: Tim Sweeney.

6 MR. FIKSDAL: Kittitas County.

7 MS. JOHNSON: Patti Johnson.

8 MR. FIKSDAL: And I recognize the presence
9 of the Chair, and there is a quorum.

10 CHAIR LUCE: Thank you very much.

11 This evening's hearing will be presided over
12 by an Administrative Law Judge, Julian Dewell, and at this
13 point in time I will turn the gavel over to Julian Dewell,
14 and we will proceed with the hearing.

15 JUDGE DEWELL: To the Court reporter we are
16 on the record. Good evening. My name is Julian Dewell,
17 and I am an Administrative Law Judge for the State of
18 Washington. Can you hear me?

19 AUDIENCE MEMBER: You need to speak up.

20 JUDGE DEWELL: With the Washington State
21 Office of Administrative Hearings. I've been appointed by
22 the Council to facilitate proceedings this evening, and I
23 will preside over today's land use hearing.

24 This is a land use hearing held before the
25 Washington Energy Facility Site Evaluation Council

1 pursuant to the provisions of the Washington
2 Administrative Code Title 463 and the Revised Code of
3 Washington Section 80.50.090.

4 This public hearing is held in the Home Arts
5 Building of the Kittitas County Fairgrounds in Ellensburg,
6 Washington starting at about 6:00 p.m., Thursday, May 1,
7 2003. Public notice of this hearing was given in the
8 Daily Record. Notices were also mailed to persons on the
9 Council's interested persons mailing list.

10 This land use hearing is being held to
11 receive public testimony, both oral and written, with
12 regard to whether the Kittitas Valley Wind Power Project
13 is consistent with local and regional land use plans and
14 zoning ordinances.

15 Sagebrush Power Partners, LLC., has
16 submitted an application to construct and operate a
17 182-megawatt wind turbine electric generation facility in
18 Kitsap County, Washington. EFSEC -- that's the Council.
19 That's just an abbreviation for it. -- rules allow the
20 Applicant to provide certificates from local authorities
21 attesting to the fact that the proposal is consistent and
22 in compliance with county or regional land use plans or
23 zoning ordinances. Such certificates will be regarded as
24 prima facie proof of consistency in compliance with such
25 zoning ordinances or land use plans and absent contrary

1 demonstration by anyone at the hearing.

2 In other words, if there is such a
3 certificate presented, persons would be allowed to
4 demonstrate inconsistency irrespective of that, but that
5 is a prima facie case, which means absent any contrary
6 evidence then it's prima facie.

7 If the Applicant does not present such
8 certificates and does not demonstrate compliance with
9 local land use plans and zoning ordinances, the Council
10 will request testimony from the County regarding
11 consistency and compliance. Based on the testimony
12 received today and after consideration of the public
13 comments received regarding this matter, the Council will
14 make a determination regarding consistency and compliance
15 with zoning and land use.

16 The Council has invited Mike Lufkin,
17 Assistant Attorney General and Counsel for the
18 Environment, to be present tonight.

19 Mr. Lufkin, please stand up and identify
20 yourself.

21 MR. LUFKIN: It's a pleasure being here
22 tonight. If anybody has any questions for me afterwards,
23 I will be happy to stick around and talk.

24 JUDGE DEWELL: Mr. Lufkin, would you please
25 explain your statutory duties under Chapter 80.50 of the

1 Revised Code of Washington and come to the microphone, if
2 you would.

3 MR. LUFKIN: Thank you. My name is Mike
4 Lufkin. I'm with the Washington State Attorney General's
5 Office, and as Judge Dewell explained Counsel for the
6 Environment in this EFSEC proceeding.

7 Counsel for the Environment is a position
8 that was created by the legislature, and it's a statutory
9 position with means that when EFSEC convenes to hear a
10 matter like this the Counsel for the Environment is an
11 automatic party to those proceedings.

12 My job in the proceedings is to represent
13 the public and its interests in protecting the quality of
14 the environment. So what that means is that I am a
15 participant and a party actively trying to work within the
16 Council adjudication to better the environment.

17 I have received a lot of information from
18 folks who are concerned about environmental issues. I
19 appreciate that. I've received stuff via e-mail, fax, and
20 otherwise. I would be happy to talk with folks afterwards
21 if you want to. I will stick around for a while. I know
22 there was a couple of people in particular that wanted to
23 talk, so feel free to keep sending me stuff, and we can
24 talk further if you wish. Thanks.

25 JUDGE DEWELL: Thank you Mr. Lufkin.

1 The procedure today is as follows: During
2 today's hearing we will hear first from the Applicant,
3 Sagebrush Power Partners; second, from the representatives
4 from Kittitas County; third, from members of the public;
5 and fourth, from staff. Each will have an opportunity to
6 provide testimony or comment to the Council. Each person
7 testifying will be sworn in and asked to state your name
8 and whom you represent. Council members may have
9 questions about your comments, so please stay at the
10 microphone until we find out whether there are any
11 questions for you.

12 During today's land use hearing there will
13 be no opportunity for discussion between speakers and
14 others. Prior to making a decision regarding the
15 project's consistency and compliance with county or
16 regional land use plans or zoning ordinances in accordance
17 to the Council rules, the Council will consider the
18 testimony and written comments received. Anyone who plans
19 to testify should sign up on the sign-up sheet located in
20 the back of the room. I have that sign-up sheet, and if
21 you are here and you wish to testify and your name is not
22 down here, it has to be on here in order for you to
23 testify this evening.

24 Please remember testimony today is limited
25 to whether the proposed Kittitas Valley Wind Power Project

1 is consistent and in compliance with Kittitas County and
2 regional land use plans and zoning ordinances. That's the
3 purpose of this meeting. We had a meeting once before
4 that dealt with comments with respect to the potential
5 environmental impact plans, but tonight's meeting is
6 limited to whether the proposed Kittitas Valley Wind Power
7 Project is consistent and in compliance with the Kittitas
8 County and regional land use plans and zoning ordinances.
9 I will pause for a moment for those who wish to testify to
10 sign up at the sheet if you haven't already done so, and
11 while you have that opportunity, I will ask the Council
12 members to introduce themselves and their state and local
13 government affiliation.

14 First, I'd ask that the Applicant and I
15 understand that Mr. Peeples representing the Applicant
16 this evening step forward and present the Applicant's
17 testimony.

18 MR. PEEPLES: Thank you, Mr. Examiner. I'm
19 Darrel Peeples. I'm the attorney for the Applicant in
20 this case. I'll just very briefly state that the project
21 is not in compliance with the local zoning, and we're here
22 to ask for a finding of noncompliance pursuant to WAC
23 463-28-030. Essentially we are proceeding under WAC
24 463-28, and we're making all reasonable efforts to resolve
25 the zoning issue with the County.

1 We've made an administrative draft of an
2 application for the zoning change and it was in March. It
3 has been reviewed and with comments back from planning
4 staff, and we are in the process of modifying our
5 application and will probably file that next week. I
6 would like to have my client, Chris Taylor, sworn to put
7 on testimony essentially stating what I just said.

8 CHRIS TAYLOR,

9 being first duly sworn on oath, testified as follows:

10 EXAMINATION

11 BY JUDGE DEWELL:

12 Q. Chris, would you state your address and spell
13 your last name for the record.

14 A. Chris Taylor, T-a-y-l-o-r, here representing
15 Sagebrush Power Partners. Address 222 East Fourth Street,
16 Ellensburg, 98926.

17 EXAMINATION

18 BY MR. PEEPLES:

19 Q. Chris, what's your position and duties with
20 Sagebrush Power?

21 A. I'm the project manager for this project.

22 Q. And you've been involved in the zoning
23 process in this county for?

24 A. Since January of '02.

25 Q. And there was a new wind overlay zone

1 adopted; is that correct?

2 A. Well, originally the county adopted -- on
3 August 7 of '01, the County adopted an amendment to their
4 zoning code, Kittitas County code that allowed wind farm
5 development of a commercial scale as a conditional use on
6 AG-20 Forest and Range, Commercial Ag and Commercial
7 Forest, and during development of this project we're under
8 that regulatory framework.

9 Q. When was the new zoning overlay filed?

10 A. On December 3 of '02, the Kittitas County
11 Board of County Commissioners modified Kittitas County
12 Chapter 17.61 A, which is the current zoning code, and
13 that requires an applicant to seek a -- who wants to
14 construct a commercial wind farm to seek a development
15 agreement, a site specific rezone to limit resource
16 overlay and a site specific comprehensive, a subarea
17 comprehensive plan manual, as well as a development
18 permit, and that was adopted in December.

19 Q. This project is not in compliance with that
20 zoning ordinance; is that correct?

21 A. That's our interpretation.

22 Q. Have you been working with the County to try
23 resolve the issue?

24 A. Yes. We've met with county planning staff,
25 county legal counsel, other representatives of the County

1 to talk about this new process. This is a brand new
2 process that was adopted in December. At the time we
3 filed this application in January no other applicant had
4 pursued this process, so there was some uncertainty, and
5 it was a change for us as to what we were assuming before.
6 And we met with them to try to understand how that process
7 can mesh with the EFSEC process because the County's
8 process envisions the County doing the entire siting and
9 the permitting of the project. And so we submitted an
10 administrative review draft application to the County on I
11 believe March 27, received a letter back from them on
12 April 15, and are in the process of finalizing the revised
13 final formal application to the County.

14 Q. Do you have any idea about when that will be
15 filed?

16 A. We anticipate we can file that within the
17 next week.

18 Q. The Applicant plans to take all reasonable
19 efforts to be in compliance with the local land use
20 ordinance; is that correct?

21 A. That's correct.

22 JUDGE DEWELL: Any questions? Any questions
23 from the Council?

24 Thank you.

25 MR. PEEPLES: Thank you.

1 MR. TAYLOR: Thank you.

2 JUDGE DEWELL: Do you have any further
3 witnesses or evidence?

4 MR. PEEPLES: We have nothing further.
5 We've already filed -- the comp. plan is on file with
6 EFSEC, and the zoning ordinance is already on file. It
7 was filed. It's part of the application, the zoning
8 ordinance. I forget the exhibit, but it's an exhibit
9 that's in the zoning ordinance. The County will present
10 brief testimony and also will provide a list with regard
11 to information needed for the process. Thank you.

12 JUDGE DEWELL: Thank you.

13 At this time we'll take testimony from the
14 County.

15 MR. HURSON: My name is Jim Hurson. I'm
16 Deputy Prosecutor for Kittitas County. Obviously we're
17 not that familiar with the EFSEC process. I have my
18 planner, Clay White, here who has already submitted a
19 letter to the Council which I trust that you've all
20 received. If you don't, we have copies that we can hand
21 out. He's here to answer any questions you may have or
22 give you a brief overview. And if you feel the necessity
23 to have him sworn in, you will do so.

24 CLAY WHITE,

25 being first duly sworn on oath, testified as follows:

EXAMINATION

BY JUDGE DEWELL:

Q. Would you state your name and spell your last name and your address.

A. Clay White, W-h-i-t-e, 411 North Ruby, Suite 2, Ellensburg, Washington. I work for the Kittitas County Community Development Services Department.

Basically this application is not in compliance or consistent with the Kittitas County Comprehensive Plan or Zoning Ordinance, and as of May 1, 2003 we have received no formal application. That's all I have.

JUDGE DEWELL: Any questions from the Council?

Thank you, sir.

MS. MAKAROW: Excuse me, Judge. Judge Dewell, this is Irina Makarow on EFSEC staff. I would just like to add for the record that the County letter is included in the packets before the Council members today.

JUDGE DEWELL: Okay. Thank you. Is that an exhibit then?

MS. MAKAROW: Yes, and that is Exhibit No. 13.

MR. HURSON: For the record, Jim Hurson, Deputy Prosecutor. We were advised that there would be a

1 stipulation that there is a lack of consistency in the
2 zoning, a lack of consistency in the comprehensive plan,
3 so we really didn't have much of a formal presentation
4 prepared, so we believe it's -- we understand that the
5 decision of the Board will be that there is nonconsistency
6 and direct the Applicant to proceed forward.

7 The thing I did want to take time as long as
8 we have the time here is I'm seeing because of the date
9 where we are already through the process that the
10 consistency issue can cause us some problems as far as
11 meeting the time frames under the regulations and the WACs
12 on the timing for these projects. We're over 100 days in
13 the process. We still don't have an application. We
14 don't know when we'll get the application. One of the
15 WACs seems to imply that once you enter an order telling
16 the Applicant to seek consistency, there's basically a
17 90-day window for that to occur.

18 Of course, that's a WAC that was done back
19 in 1978, and since then planning has changed a lot and a
20 90-day window to approve a comprehensive plan change and
21 the rezone of 5,000 acres, 90 days really isn't a
22 realistic expectation to have that and be able to work
23 through the public process in one of those procedures that
24 we're required under the growth management to comply with.

25 So I just wanted you to be aware of that

1 fact, so that if we have to come back to the Council in
2 two or three months that there may be the need to deal
3 with the timing issues, and I know you haven't yet set the
4 adjudicatory hearing or all of the other specific dates,
5 but we don't have the advantage of the last hundred days
6 to have been processing the application. We don't know
7 when we will get it. I have an all volunteer planning
8 commission that is required by law to be the one to
9 process through.

10 We have already just under our current
11 normal case loads this month's and next month's planning
12 commission meetings are already full for public hearings,
13 and so I think we can all agree that there isn't some
14 expectation that all people who already have their
15 applications have to sort of step aside to let this Zilkha
16 application go in front, and I'm sure Zilkha agrees with
17 that too. So there's a timing as far as dealing with our
18 public process and what we have as far as time and staff
19 and resources, so I don't know if we're going to be able
20 to stay in that one-year track or when that adjudicatory
21 hearing will set.

22 I'm not suggesting that you make a decision
23 on that. I just wanted you to be aware of that. I
24 mentioned this to Zilkha's attorneys before the hearing,
25 and I think they recognize that's an issue, but it's not

1 something we need to resolve now. Just this is a big
2 project. It has a lot of passion locally, both for and
3 against, so I assume that my commissioners are going to
4 want to have the time to make a knowing land use planning
5 decision on this, whether it's for or against, and want to
6 have the time to do it appropriately. So that may just be
7 a time frame issue.

8 JUDGE DEWELL: Just for your information,
9 there is a provision in the administrative code that
10 provides about the 90 days, and it can be mutually
11 extended between the Council and the Applicant.

12 MR. HURSON: And I know we always want to
13 process things in a timely fashion. We endeavor as a
14 county to try to get things through, but things happen,
15 and I want the Council to be aware that this is a
16 potential glitch in that 12-month cycle. And if we get to
17 the point where that needs to be addressed, we'll, of
18 course, be working with Zilkha's representatives to get
19 before the Council to address that issue when it needs to
20 be addressed.

21 JUDGE DEWELL: Just for the record, are you
22 aware of any regional land use plans that will be
23 applicable to this situation?

24 MR. HURSON: As far as ours? Well, our
25 comprehensive plan allows a wind farm if it is designated

1 into a comprehensive plan as a wind farm resource area,
2 but there is no such designation in our comp. plan yet, so
3 that's part of the process that we have to adopt an
4 amendment for a comprehensive plan if there's to be
5 consistency.

6 JUDGE DEWELL: That's the County ordinance.
7 Are you aware of any regional land use plans that would be
8 applicable to this matter?

9 MR. HURSON: Other than the County's?

10 JUDGE DEWELL: Yes.

11 MR. HURSON: Just general state law. I mean
12 we have our general state law planning enabling act, GMA,
13 SEPA, half a dozen other regulations, but no specific
14 plans other than state and local regulations. Anything
15 else?

16 JUDGE DEWELL: Any questions?

17 MR. HURSON: Thank you.

18 JUDGE DEWELL: Thank you.

19 At this time we will take testimony from the
20 public, and I'll just go down the list. I would again
21 indicate to you that the testimony today is to be limited
22 to whether the proposed Kittitas Valley Wind Power Project
23 is consistent and in compliance with Kittitas County land
24 use plans and zoning ordinances. And I would ask that
25 when you testify this evening try to limit yourself to

1 what we're here for this evening. There will be another
2 opportunity for you to expand on matters as many of you
3 did previously, but we're trying to limit the proceedings
4 to what the administrative code and the statute provides.

5 So the first person on the list here is Lee
6 Bates. If you would step forward and raise your right
7 hand, please, sir.

8 LEE BATES,
9 being first duly sworn on oath, testified as follows:

10 EXAMINATION

11 BY JUDGE DEWELL:

12 Q. Would you please state your name and your
13 address for the court reporter.

14 A. Lee Bates. I represent myself. My address
15 is 1509 Brick Road, Ellensburg, Washington 98926.

16 My testimony is regarding the land use plans,
17 and its regarding a scenic byway proposed by the
18 Washington State Department of Transportation. It's
19 recommending that a section of Highway 97 that is targeted
20 by Zilkha for its wind farm should be designated a state
21 scenic byway, and I feel this should be considered by
22 EFSEC, since a major industrial project is not appropriate
23 on a scenic byway. This is Highway 97. Is there any
24 questions?

25 JUDGE DEWELL: Any questions from the

1 Council?

2 Thank you very much, Mr. Bates.

3 Next witness from the public would be
4 Mr. Jeff Howard.

5 JEFF HOWARD,

6 being first duly sworn on oath, testified as follows:

7 EXAMINATION

8 BY JUDGE DEWELL:

9 Q. Please state your name and your address.

10 A. My name is Jeff Howard. My present address
11 where I live now is 5511 West Lake Sammamish Parkway N.E.,
12 in Redmond, and I would submit that based, Judge, on what
13 you said about what the limitations of this procedure are,
14 we've already had testimony from the Applicant and from
15 the County that at present this plan does not comply with
16 Kittitas County zoning and the comments that I had
17 prepared basically addressed how the present zoning is
18 being used and would probably not be applicable at this
19 hearing, so I'll probably share them with the gentleman
20 from the environmental outfit.

21 Q. If you wish to file that as an exhibit rather
22 than to recite it, that's certainly acceptable, the
23 remarks that you have there in writing.

24 A. Yes, sir. But they don't have anything to
25 do with the zoning. It's just the present use, the way

1 it's being used at this particular point by the local
2 residents and so forth. So thank you.

3 JUDGE DEWELL: Thank you very much, sir.

4 Any questions from the Council?

5 The next witness will be Andrew Johnson.

6 ANDREW JOHNSON,

7 being first duly sworn on oath, testified as follows:

8 EXAMINATION

9 BY JUDGE DEWELL:

10 Q. Would you state your name and address.

11 A. Andrew Johnson, J-o-h-n-s-o-n. I live at 260
12 Lenes -- that's spelled L-e-n-e-s -- Road, Ellensburg,
13 98926.

14 Q. Thank you.

15 A. The testimony that I have prepared is really
16 rather redundant to what's already been said, so I have
17 one small thing to point out here, and I hope you won't
18 take offense at this. But you called this Kitsap County
19 rather than Kittitas County, and I believe that should be
20 corrected on the official record.

21 Q. My apologies.

22 A. Thank you very much. I would point out as
23 has been covered already the zoning on the land in
24 question is not compatible with the development with an
25 industrial complex which most certainly the electrical

1 generation that is proposed definitely is an industrial
2 complex. And other than questions, I will leave it at
3 that.

4 JUDGE DEWELL: Are there any questions for
5 Mr. Johnson?

6 Thank you very much, sir.

7 MR. JOHNSON: Thank you.

8 JUDGE DEWELL: The next member of the public
9 is Mr. Mike Robertson.

10 MIKE ROBERTSON,
11 being first duly sworn on oath, testified as follows:

12 EXAMINATION

13 BY JUDGE DEWELL:

14 Q. Would you please state your name and address?

15 A. Mike Robertson. I'm representing myself and
16 my wife, Elizabeth. We live at 4101 Bettas Road, Cle
17 Elum. After hearing the Applicant's presentation and the
18 Kittitas County presentation, I think they are in
19 agreement that they are not in compliance to zoning for
20 our county at this point. I, too, have submitted my
21 prepared presentation to Irina, and it's on file, so I
22 won't take everybody's time up. Thank you.

23 JUDGE DEWELL: Thank you.

24 The next person to testify is Mr. John
25 Williams.

1 JOHN WILLIAMS,

2 being first duly sworn on oath, testified as follows:.

3 EXAMINATION

4 BY JUDGE DEWELL:

5 Q. Would you state your name.

6 A. My name is John Paul Williams,
7 W-i-l-l-i-a-m-s. My address 19815 N.W. Nestucka Drive,
8 Portland, Oregon 97229. I'm here tonight appearing on
9 behalf of Rebound, a building trades organization based in
10 Northwest Washington. Rebound has many members living in
11 the project vicinity and in this county. I have some
12 written remarks I'm going to submit as an exhibit. The
13 thrust of them has already been covered by the County's
14 testimony.

15 I would like to add also that Rebound
16 believes the project conflicts with the tenets of the
17 swift water corridor revision which urges enhancement,
18 individual resources in the vicinity where the project is
19 suppose to be sited.

20 I urge the Council to postpone a hearing on
21 the land use situation because we have a procedural
22 problem. The SEPA document is suppose to be the engine
23 that pulls along all these permit reviews, and the County
24 is going to be in a position of trying to issue a permit
25 perhaps before the final EIS is even prepared and

1 certified. And the EIS should be prepared and finalized
2 before any of these permits are issued. Now, in a way the
3 cart is pulling the horse in this process, and I urge
4 delay of these land use decisions until a final EIS is
5 prepared.

6 JUDGE DEWELL: Any questions from the
7 Council?

8 Thank you very much, sir.

9 MR. WILLIAMS: Thank you.

10 JUDGE DEWELL: The next witness will be
11 Mr. Ed Garrett.

12 ED GARRETT,

13 being first duly sworn on oath, testified as follows:

14 EXAMINATION

15 BY JUDGE DEWELL:

16 Q. Would you state your name and address.

17 A. Any name is Ed Garrett. I represent myself
18 and my wife, Rosemary Monaghan. Address is 19205 67th
19 Avenue S.E., Snohomish, 98296.

20 My wife and I attended many hours of meetings
21 with Kittitas County planners, commissioners, as well as
22 the other people last year in order to update the utility
23 ordinance regarding the placement and requirements for
24 commercial wind farm operations. Our efforts were
25 successful, and as a result thereof there's now in place a

1 fair and equal ordinance. It was decided by the county
2 commissioners that commercial wind farm operations are not
3 consistent with the current zoning and comprehensive plan.

4 Be that as it may, Zilkha decided to file
5 with EFSEC and not go through this process which was
6 mutually worked out. There's another competing wind farm
7 now in Kittitas County called enXco. They feel that it is
8 a fair process, and they are going through their
9 permitting process using the County's. So like the
10 prosecuting attorney is saying the County is going to be
11 very busy because this issue has been very hot in this
12 county with pros and cons. Now we have two processes that
13 are going to be intermixing with each other with competing
14 time limits and very limited resources.

15 In 2001, we purchased 50 acres in Township
16 13, 12 miles northwest of Ellensburg. The whole area,
17 about 800 acres is being subdivided and sold off but is
18 being advertised as recreational properties, mostly in
19 50-acre parcels. Currently all have been sold. One is
20 being resold. Most of the area is zoned forest and range.
21 There's no agricultural use and there is no industrial
22 use. It is, however, compatible for residential
23 development which is a permitted use and which is already
24 started in that area bordering the wind farm.

25 Consider also that the -- oh, I had another

1 thing I wanted to add. Just this week another competing
2 area or another area bordering this wind farm used to be a
3 large farm. Most of these large farms that used to have
4 cattle and agriculture are dying out. The only way the
5 farmers can make anything is they subdivide and sell it
6 off as recreational properties. Another big property just
7 went up for sale recently and was sold to a developer. He
8 just subdivided everything out, and I have his ad here,
9 and it's being advertised 19-acre parcels running from
10 429, acres, mountains, territorial views ready for
11 development, and, again, this is bordering the proposed
12 wind farm, so I'm going to submit this, so you can see
13 that.

14 Currently also that the new view alone is not
15 -- the view alone is reason that a giant wind farm turbine
16 should not be an allowed use. We may be called NIMBY's,
17 and we personally don't have a problem with that, but
18 apparently the officials at the Washington State DOT feel
19 that it is an important natural resource. They have
20 prompted elected officials to pose Legislation House 2058
21 and Senate Bill 5937 to protect scenic corridors in the
22 state. Highway 97 from Highway 10 to State Route 2 has
23 been so designated and Senate Bill 5937 which was just
24 recently passed into law. It would not make sense to
25 place giant wind turbines straddling Highway 97 which is

1 now considered a first class view shed.

2 Thank you for your time in this matter. I
3 hope you fellow EFSEC Council members agree that as
4 currently submitted Sagebrush Power application is not
5 compatible or consistent with current Kittitas zoning,
6 counter to the County 2003 comprehensive plan, and the
7 State's designation through Senate Bill 5937 as a scenic
8 corridor. Thank you. Any questions?

9 JUDGE DEWELL: Any questions from the
10 Council?

11 Thank you very much, sir.

12 MR. GARRETT: Thank you.

13 JUDGE DEWELL: The next person to testify is
14 Amy Oslund.

15 AMY OSLUND,
16 being first duly sworn on oath, testified as follows:

17 EXAMINATION

18 BY JUDGE DEWELL:

19 Q. Would you please state your name and address.

20 A. I'm Amy Oslund. I live at 31802 N.E. 139th
21 Street, Duvall. I am an Ellensburg property owner on 4951
22 Elk Springs Road.

23 Major industrial commercial wind power
24 generation plants are obviously not consistent with the
25 current land uses and zoning. The proposed project is in

1 a residential, recreational land use area. The zoning is
2 AG-20 and forest and range. The Applicant will have to
3 apply at the county level to rezone the project area to a
4 wind farm overlay zone, amend the County comprehensive
5 plan, and do a development agreement with the County to
6 protect the county and the community from the adverse
7 impacts that arise from such a proposal. The site
8 specific criteria established by the County planning and
9 public input will and should dictate where commercial wind
10 farms could be compatible with the current and future land
11 uses in this county.

12 I also feel that 90 days to become county
13 zoning is just not a realistic time frame to rezone and
14 work out a public development agreement. Thank you. Any
15 questions?

16 JUDGE DEWELL: Any questions for the witness?

17 Thank you very much.

18 Jim Stewart.

19 JIM STEWART,

20 being first duly sworn on oath, testified as follows:

21 EXAMINATION

22 BY JUDGE DEWELL:

23 Q. Would you state your name and give your
24 address, please.

25 A. My name is Jim Stewart. My physical address

1 on the highway is 3295 Bettas Road, Cle Elum.

2 I would like to reaffirm what I've already
3 heard from the other applicants is basically this is
4 incompatible with the use of the land out there. I have
5 one addition that I have sent to Irina. In all these
6 processes, whether it's EFSEC or the County, we expect the
7 Applicant when he applies, when he does his studies, he
8 does the things that's required as the impact on the area
9 to basically as it states in the environmental impact that
10 the information will be true and correct to the best of
11 his knowledge; that the lead agency is making its decision
12 upon the information provided. That's my only how should
13 I say request of the Applicant. Any questions?

14 JUDGE DEWELL: Any questions from the
15 Council?

16 Thank you very much, sir.

17 MR. STEWART: Thank you.

18 JUDGE DEWELL: Mr. Hal Lindstrom.

19 MR. LINDSTROM: I pass. I submitted a
20 written statement.

21 JUDGE DEWELL: Thank you very much, sir.
22 For the record, that's L-i-n-d-s-t-r-o-m?

23 MR. LINDSTROM: Correct.

24 JUDGE DEWELL: And first name is H-a-l.

25 MR. LINDSTROM: Harold, H-a-r-o-l-d.

1 JUDGE DEWELL: It's Hal here, but, yes.

2 Okay.

3 James Carmody.

4 JAMES CARMODY,

5 being first duly sworn on oath, testified as follows:

6 EXAMINATION

7 BY JUDGE DEWELL:

8 Q. Would you please state your name and your
9 address.

10 A. Thank you and good evening. My name is James
11 Carmody. I'm an attorney with Velikanje, Moore, and Shore
12 in Yakima. My address is 405 East Lincoln. I have been
13 involved in this project for what seems like forever. I
14 think the recognition by Zilkha tonight is telling, and
15 it's important in this entire process and it bears upon
16 the concerns members of the community have had. I have
17 represented a citizens group which is broad based and have
18 been involved in this from the inception. And that is the
19 recognition tonight by Zilkha that this project is not
20 consistent with either the zoning ordinance or the
21 comprehensive plan of this community. And they gave you a
22 little bit of background on what that history was, but I
23 think it's important to keep in mind what that history was
24 in the context of this and where we're at in your process.

25 This county originally had a zoning ordinance

1 which allowed a conditional use for wind farms. That
2 zoning ordinance was adopted in a manner noncompliant with
3 the Growth Management Act, and we filed an appeal with the
4 Eastern Washington Growth Management Hearing Board. In
5 the context of that process the County recognized
6 noncompliance, recognized the interest of the community,
7 and engaged in a prolonged process to develop siting
8 criteria and procedures for these very large, intrusive,
9 and substantial projects. It was a prolonged process with
10 many, many public hearings before the planning commission
11 and the County commissioners and ultimately a zoning
12 ordinance was adopted out of that process.

13 Now by way of background, Zilkha was actively
14 involved in the first process, but ceased to participate
15 once the community became involved, and we went through
16 the planning and consideration of the new ordinance. They
17 simply chose at that point in time not to participate and
18 disappeared. On the other hand, enXco, the other project
19 being proposed, actively participated in that process and
20 a process was developed. And Zilkha knew very well what
21 that process was and what it entailed, and the process is
22 a process patterned in this county after the Trend West
23 project which was a large resort development which
24 integrated review of comprehensive plan, subarea plans,
25 overlays, development agreements, and a whole variety of

1 things, so the public could participate in that process,
2 and the outcome would be a known and informed process.

3 Zilkha knew what that process was when they
4 filed their application with you in January. Yet here we
5 are three and a half months later and they're saying that
6 they have not complied and really have taken no steps to
7 comply with that process. They just supposedly a month
8 ago filed a draft application, nearly two and a half
9 months after they filed this.

10 Now I give you this background for the
11 purpose that I'm very concerned about the motivations and
12 where this is going because under your rules there's a
13 90-day compliance period, and if at the end of 90 days
14 there is not compliance, you have rights to preempt the
15 County planning processes.

16 The process is set up, and the realistic
17 process that would take place in the county takes more
18 than 90 days. That means that the environmental review
19 that Zilkha or the other project, the enXco process has an
20 EIS. You recognize an EIS is appropriate in this process.
21 But the County and the community will never have the
22 meaningful right to participate if at the end of 90 days
23 they're cut off and that process is cut of. So we are
24 expressing those concerns right now and asking you to
25 allow this community that's been so activity involved in

1 this issue to process it and be involved before any
2 actions are taken here or before any steps are taken with
3 respect to preemption. I appreciate your thoughts, and
4 I'll take any questions you might have.

5 JUDGE DEWELL: Questions from the Council?
6 Thank you very much, sir.

7 The next witness will be Geoff Saunders.

8 GEOFF SAUNDERS,
9 being first duly sworn on oath, testified as follows:

10 EXAMINATION

11 BY JUDGE DEWELL:

12 Q. Would you please state your name and give
13 your address to the court reporter.

14 A. I'm Geoff Saunders, 8241 Elk Springs Road,
15 Ellensburg.

16 Q. Please proceed.

17 A. As the previous speaker said there's a lot
18 history to this before EFSEC became involved with the
19 process. It's a very controversial issue in this
20 community. It began about a year ago when the Applicant
21 announced in the newspaper that they would be planning or
22 would be applying for eventually to develop this project.
23 A number of public meetings were held. In fact, some of
24 the greatest public involvement that has ever been seen in
25 this community resulted from this. Lots of meetings have

1 been held by the planning department and the commissioners
2 trying to determine the best way for the siting of this
3 project to be determined.

4 As a result, as we've already heard this
5 evening a new ordinance, a much better ordinance was put
6 in place late last year. As the previous speaker said,
7 Zilkha at that point decided not to participate because
8 they could see that there was a great deal of public
9 opposition to this project. Last month the local
10 newspaper, The Daily Record, ran a poll in which five
11 thousand people participated, and in a community this size
12 that's an amazing number of people. Of those five
13 thousand people I relay the question was very simple: Are
14 you in favor of wind farms coming to this community?
15 Eighty-three percent voted no. This is an issue of
16 enormous interest and concern for the community, and there
17 is a very widespread concern that Zilkha is not acting in
18 good faith, and, in fact, Zilkha's application to EFSEC is
19 an indication that its lack of good faith.

20 We had a process which was developed as I
21 said with a great deal of community input and a great deal
22 of work by local officials, and Zilkha elected to bypass
23 that process and come to EFSEC because of the obvious
24 community hostility towards this. Now we learn that they
25 haven't yet applied to the County for consistency,

1 including they're very reluctant to do so, but now the
2 County has merely 90 days to determine whether or not
3 their project is consistent. At that point our
4 understanding is they can come back to you and ask you to
5 preempt the County if they're unable to reach an agreement
6 with the County in 90 days.

7 I don't think I'm alone in saying that we
8 feel this shows a terrible lack of good faith on the part
9 of the Applicant. We don't think this is the right way to
10 go about a process like this. As for the current use of
11 the land a number of people already testified that this is
12 not farm land. Typically projects like this are sited
13 like the one at Walla Walla in farm land, a long way from
14 communities. To the best of my knowledge nowhere else in
15 the United States has a wind farm of this size ever been
16 proposed just ten miles or less from a city of this size
17 of over ten thousand people.

18 The area in which is being proposed is a
19 residential and recreational area. There is very, very
20 little farming going on. There was a letter to the local
21 newspaper last month by a farmer who had in fact just
22 signed a lease agreement with a wind farm developer here.
23 In fact, it was the other one, enXco, and that the farmer
24 indicated that because of all the residential development
25 that's in the area, the area is no longer suitable for

1 farm land and as a result he was going to take the money
2 and move out of state where he could go do this farming in
3 an area that was more appropriate.

4 Those of us who live in the area and will
5 profit in the area are horrified by the prospect of this
6 project. Someone else already alluded to the fact that
7 the road which is going to be straddled by this project,
8 Highway 97, has been designated a scenic byway by the
9 state, and I believe a hundred thousand dollars is being
10 set aside this fiscal year in the corridor management
11 protection program to protect this area from exactly this
12 kind of industrial development.

13 Ellensburg is a live city, and it's growing
14 very rapidly. The area that Zilkha wants to build this
15 along Highway 97 is the logical area for the city to
16 develop into in the next 10, 20, or 30 years. But if this
17 wind farm goes ahead, and Zilkha has already said publicly
18 that the wind farm is going to be there forever, and that
19 area is cut off from development, it prevents the
20 community from growing because people obviously don't want
21 to live near a project like this. That's all I have to
22 say. Thank you.

23 JUDGE DEWELL: Thank you very much, sir.

24 Any questions from the Council?

25 Thank you.

1 Chet Morrison.

2 MR. MORRISON: I'll pass.

3 JUDGE DEWELL: Dennis -- I can't read the
4 spelling of your last name.

5 DENNIS ROMPPEL,

6 being first duly sworn on oath, testified as follows:

7 EXAMINATION

8 BY JUDGE DEWELL:

9 Q. Would you please state your name and spell
10 your last name for the court reporter and give your
11 address.

12 A. My name is Dennis Romppel. My last name is
13 spelled R-o-m-p-p-e-l, and I represent my wife, Sharon,
14 and myself. I live at 1020 Chukar, c-h-u-k-a-r, Ridge
15 Road, Ellensburg, Washington.

16 And mine's much of a question as not. The
17 project does not meet the zoning requirements at this time
18 I understand, and my concern I guess is the process that
19 allows the determination whether it will eventually meet
20 it that this is not a health issue and/or is an issue that
21 requires intervention by the government in the sense that
22 it would be like a highway going through a major highway
23 or a life safety issue and things like this.

24 My question I guess comes to the point where
25 in determination of this when it comes down to a zoning

1 issue like this does it rely back to the people in the
2 area that this is going to affect? Because in a case
3 where -- in a case where or a situation where it is not a
4 life safety issue, it doesn't affect other people in that
5 sense or an emergency situation, does it come back down to
6 the individuals that live in the area that it's going to
7 affect? In other words, are they taken into
8 consideration?

9 That's basically the only statement I had is
10 clarification on that.

11 JUDGE DEWELL: Well, this procedure for if
12 it's found that the use is not compatible with the local
13 zoning ordinances, then there's a procedure that requires
14 that the Applicant work with the County for a period of
15 time. After that period of time unless there's an
16 extension of that period time, then the matter can
17 essentially there are certain alternatives that can be
18 taken at the conclusion of that time.

19 I can't say which of those alternatives might
20 be taken by the Council. It would depend upon what the
21 circumstances were, and if you would like, we could give
22 you the references to the various administrative code
23 provisions, so that you can review them by yourself or
24 with a representative, and I would be happy to furnish you
25 with that.

1 MR. ROMPPEL: My main concern is that the
2 government is suppose to represent the people that put
3 them into power, and the representation should be of the
4 people, particularly those that it's going to affect their
5 property and their living area and their lives is all.

6 JUDGE DEWELL: If you would like, you could
7 talk to the staff about the situation, and they can
8 furnish you with the information that you want.

9 MR. ROMPPEL: Okay.

10 JUDGE DEWELL: Thank you. Any questions
11 from the Council for this gentleman?

12 Werner Hillemann.

13 WERNER HILLEMANN,
14 being first duly sworn on oath, testified as follows:

15 EXAMINATION

16 BY JUDGE DEWELL:

17 Q. Would you state your name and give your
18 address to the court reporter.

19 A. Werner Hillemann, W-e-r-n-e-r
20 H-i-l-l-e-m-a-n-n, 1141 Chukar Ridge Road, C-h-u-k-a-r,
21 Ellensburg. I was tempted to pass, so I wouldn't beat a
22 dead horse, but I am going to bring that up again because
23 where we live in this area is zoned agricultural, quickly
24 becoming residential, and the farmer inquest and the story
25 I heard a while ago, I know him personally, and he's been

1 having a lot of trouble with his farm and divorce, and
2 this is almost an in-your-face kind of thing to sell his
3 property and leave.

4 And this is zoned agricultural as I said,
5 quick to become residential, and this is not in
6 compliance, and the County has not received an application
7 for rezoning. And I feel I missed the first meeting, and
8 I wish I would have attended it because I didn't have a
9 chance to give my environmental concerns. But I feel like
10 this is being pushed through for the benefit of the few
11 disregarding the people that do live there and whose
12 quality of life it's going to directly affect, and I hope
13 we go through due process and that our questions and our
14 concerns are dealt with properly. That's all.

15 JUDGE DEWELL: Are there any questions from
16 the Council for this witness?

17 Thank you very much, sir.

18 MR. HILLEMANN: Thank you.

19 JUDGE DEWELL: Lawson Schaller.

20 LAWSON SCHALLER,
21 being first duly sworn on oath, testified as follows:

22 EXAMINATION

23 BY JUDGE DEWELL:

24 Q. Would you please state your name and give
25 your address.

1 A. Lawson Schaller. My mailing address is 11504
2 Bartlett Avenue N.E., Seattle, Washington 98125. I'm
3 representing myself and my wife, Anne Norment. We own
4 property off of Bettas Road just west of Highway 97. I am
5 here to restate and reaffirm that Zilkha's project is not
6 consistent with Kittitas County land use plans and zoning.
7 It seems rather obvious it's quite contrary to the scenic
8 byway off Highway 97.

9 I oppose the project now and hope to have an
10 opportunity to voice opposition in the future in general
11 the scope before me. I would like to reiterate the
12 importance of due process and wasn't aware, but it seems
13 rather clear, please correct me if I'm wrong, it seems
14 that Zilkha is trying to circumvent the County in working
15 directly with the state, and that is a big concern.
16 That's it. Thank you.

17 JUDGE DEWELL: Any questions from the
18 Council?

19 Thank you very much, sir.

20 Desmond Knudson. Am I saying it right, sir?

21 MR. KNUDSON: Yes, you did.

22
23 DESMOND KNUDSON,

24 being first duly sworn on oath, testified as follows:

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EXAMINATION

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BY JUDGE DEWELL:

Q. Will you give your name to the court reporter and spell your last name.

A. Desmond Knudson, K-n-u-d-s-o-n.

My testimony today is when Zilkha first started this process the County had an ordinance in place that this stuff could be put on range, forest, and AG-20 land. During the process trying to inform the public of what was going on, there was a minority of people that opposed it, and during the political outcome they got the commissioners to reexamine it, went to the planning commission to reexamine it. The planning commission didn't get done what they were suppose to be getting done to the commissioners. The commissioners went ahead and made a decision to put in an overlay zone. I believe Zilkha is trying to get through that process right now.

So a long story short, if they are trying to get in compliance, and they are out of compliance now, but the process working through will come through.

A little editorializing to kind of some of these other facts that were placed by Mr. Carmody. Mr. Carmody forced Zilkha's hand to go to this process when he threatened publicly to take them to every court in the land. It's that simple. Mr. Saunders he was stating

1 some facts, and I'm trying to look at my notes, and
2 unfortunately I can't find them.

3 But I would like to let you know Zilkha has
4 been very forward with these land use issues. There was
5 an ordinance, our utility ordinance was on the board. Our
6 planning commission voted to send it to the commissioners
7 to okay it, and not until they started the process did
8 rules and game plan get changed. I don't blame still
9 Zilkha for wanting to go this way because it cuts the
10 court process down. Thank you.

11 JUDGE DEWELL: Any questions from the
12 Council?

13 Thank you sir.

14 Does the staff have any additional comments
15 or information that they wish to submit at this time?

16 MS. MAKAROW: Yes, we do. In addition to the
17 16 land use exhibits that are included in the Council
18 member's packets, the time limit to receive comments was
19 5:00 p.m. in our office or hand deliver them at this
20 meeting, and we did receive a few more exhibits which I
21 will summarize for you right now.

22 Land use Exhibit 17 was an e-mail sent by
23 Ms. Cathy Fyall which we received around 4:00 p.m. by
24 e-mail in our office. Ms. Fyall indicated that the
25 proposed use was not consistent with existing zoning, and

1 that the existing AG-20 zoning allows for small acreage
2 housing, and that is what is slowly being developed in the
3 area.

4 With regards to the land use exhibits that
5 were hand delivered today, Exhibit No. 18, the written
6 testimony of Michael Robinson which he actually presented
7 orally.

8 Exhibit 19 from Al and Diane Schwab who also
9 testify that the land use is not consistent; that it would
10 require a change in the County comprehensive plan and
11 rezone, and that property in the area has been bought to
12 live on for recreational use and for investment purposes.

13 Exhibit 20, Mr. Earle Price. He also
14 testifies that the land use is not consistent with the
15 forest and range zoning in that area, and the lots there
16 have been subdivided into 50-acre recreational properties,
17 and those are consistent with existing zoning and the
18 comprehensive plan. He indicates that the Applicant would
19 need to apply for a zoning change, and he also raises the
20 issues of Highway 97 being eligible for national scenic
21 byway funding.

22 Exhibit 21 of J.E. and Gloria Baldi, they had
23 no specific comments regarding land use consistencies but
24 addressed the issue of exactly how many turbines would be
25 installed and what the exact impacts would be.

1 The testimony in Exhibit 22 of Mr. Hal
2 Lindstrom he did not have any specific comments about the
3 land use consistency but addressed aesthetics of the
4 project.

5 Exhibit 23 from Steve and Any Oslund, Ms. Amy
6 Oslund presented the information in her oral testimony.

7 Exhibit 24 From John Williams which was the
8 same as his oral testimony.

9 Exhibit 25 from Mr. Eric Wickwire which
10 indicated that the land use is not consistent.

11 Exhibits 26 and 27 from Mr. Garrett and
12 Mrs. Monaghan which were the same as Mr. Garrett's oral
13 testimony.

14 And I have Exhibit No. 28 from Roy and Cheryl
15 Chance which also indicates that the land use is not
16 consistent, and that is the end of the exhibits that we
17 received with respect to this hearing.

18 (Exhibit Nos. 17 through 28 marked for
19 identification and admitted into evidence.)

20 JUDGE DEWELL: Any questions from the
21 Council? Any questions of the staff from the Council?

22 AUDIENCE MEMBER: Is that the e-mail that
23 you're talking about?

24 MS. MAKAROW: I was just handed a letter.

25 AUDIENCE MEMBER: Oh, I see. I know I sent

1 you an e-mail commenting on it, but you don't read those,
2 right?

3 MS. MAKAROW: The e-mails that were sent are
4 already in the Council members' packets. I'm commenting
5 on those letters that we received today at this meeting.

6 AUDIENCE MEMBER: Okay. Thank you.

7 JUDGE DEWELL: Would you please step forward,
8 please.

9 MS. HALL: I have to apologize to the
10 Council. I could not make it by six o'clock today due to
11 working too far away and driving time, so I request, if I
12 may, add my name to the list and present oral testimony.

13 EXAMINATION

14 BY JUDGE DEWELL:

15 Q. Would you please state your name and spell
16 your last name and give your address.

17 A. My name is Chris, C-h-r-i-s H-a-l-l.
18 Currently my husband, Bill, and I live at --

19 Q. Excuse me. Would you give your address.

20 A. I'm doing so.

21 JUDGE DEWELL: Would you please raise your
22 right hand.

23 CHRIS HALL,

24 being first duly sworn on oath, testified as follows:

25 A. Currently my husband and I live at 106 East

1 10th Avenue, Ellensburg, Washington 98926. However, the
2 property on which we are building a house is at 3501
3 Bettas Road. As people have stated tonight much more
4 eloquently than I that the land in the Zilkha proposal
5 does not meet land use.

6 What I wanted to add to that was that the
7 intent of the land use without the overlay, and that is on
8 AG-20 the purpose and intent, the Agricultural A-20 zone
9 is an area within farming. Ranching and rural lifestyle
10 are dominant characteristics. The intent of this zoning
11 classification is to preserve the fertile farm land from
12 encroachment of nonagricultural land use.

13 The second land use is the farm and range,
14 and, again, the purpose and intent is -- the purpose and
15 intent of this zone is to provide for areas of Kittitas
16 County wherein natural resource management the highest
17 priority and where the subdivision and development of
18 lands for uses in activities incompatible with resource
19 management are discouraged.

20 As people have told you the development of
21 this area is intense. The unincorporated areas of
22 Kittitas County are growing faster than the cities are,
23 and you've already heard that they are just expanding
24 tremendously. This valley and its land use is not just
25 agricultural and forest and such, but it's really the

1 development of a living community. It's growing. It's a
2 bedroom community of Seattle. It's people coming here to
3 retire. They're living throughout the valley. Thank you.

4 JUDGE DEWELL: Any questions from the
5 Council?

6 Thank you very much.

7 I would like to suggest a short recess by the
8 Council. This is an open public meeting, and the Council
9 cannot have deliberations outside the open meeting. The
10 purpose for the short recess would be to allow the members
11 of the Council to examine the various exhibits which have
12 come before them this evening which have been provided to
13 them, but they haven't had an opportunity to do so. They
14 will remain right here, and it will be a very short time
15 before we come back into session again. So it's not
16 something we intend to nor that we expect to take very
17 long.

18 (Recess taken.)

19 CHAIR LUCE: The meeting will come back to
20 order. Judge Dewell, thank you for your handling of this
21 hearing. The matter is now pending before the Council for
22 discussion.

23 Is there any discussion among the Council
24 members with respect to the issues presented, namely the
25 consistency or inconsistency at this land use hearing?

1 JUDGE DEWELL: If it's okay with the Council,
2 I would like to suggest a procedure this evening. A
3 member of the staff and the attorney for the Council and I
4 not in the presence of the Council went outside in light
5 of testimony and the exhibits that have been presented
6 this evening and attempted to draft some proposed findings
7 of fact and conclusions and a suggested determination, as
8 well as an order. And I'm going to read it, so everybody
9 is aware of it. The Council has not seen it before. It's
10 not been provided to them before now. But what we're
11 going to do is suggest that if the Council wishes to they
12 can consider this in order to get to a decision here this
13 evening rather than taking all the evidence and going back
14 and having another meeting in connection with this at a
15 later date, and I think it's probably better to go ahead
16 and reach a decision here this evening, so that you're
17 aware of what that decision is.

18 So with the permission of the Council, I
19 would like to read the proposed findings of fact,
20 conclusions of law, determination, and order which can
21 then either be considered or rejected or modified as the
22 Council wishes.

23 CHAIR LUCE: Thank you. Please read the
24 proposed findings.

25 JUDGE DEWELL: The first would be the

1 findings of fact, and findings of fact these are what we
2 call ultimate facts. They are not a lot of very small
3 detailed kinds of facts, and that's the kind of things
4 that are required in connection with findings of fact.

5 Findings of Fact

6 Both witnesses for Kitsap County and
7 witnesses for Sagebrush testified that under Kittitas --
8 I'm sorry. Strike that. I will go right back and we'll
9 get it right. I live in Snohomish County, so we're right
10 across the sound from Kitsap.

11 Both witnesses for Kittitas County and
12 witnesses for Sagebrush testified that under Kittitas
13 County land use plans the site is not consistent with
14 local land use plans and zoning ordinances in effect at
15 the date of the application. There are exhibits which
16 would be attached to indicate this, as well as the
17 testimony of the witnesses.

18 Number two, additional testimony received
19 from the public supports that the site is not consistent
20 with local or regional land use plans and zoning
21 ordinances in effect at the time of the application. The
22 exhibits will also be attached to support that. Members
23 of the public also brought to the Council's attention the
24 scenic byway legislation as it applies to Highway 97.

25 Number three, with regard to the submittal of

1 land use plans pursuant to the requirements of WAC
2 463-42-362 and WAC 463-42 -- no, excuse me. Strike that.

3 Three, with regard to the submittal of land
4 use plans pursuant to the requirement of WAC 463-42-362,
5 WAC 463-42-362 does not specify land use survey distances
6 for wind power projects. However, WAC 463-42-362(1)(d)
7 specifies that in the case of pipelines and electric
8 transmission routes land use plans must be submitted for
9 one mile either side of the center line. Kittitas County
10 is the only jurisdiction within one mile of the turbine
11 and related transmission facilities siting center line.
12 The Applicant has submitted such land use plans and zoning
13 ordinances to EFSEC as required by WAC 463-42-362(1). The
14 Council thereby finds that such submittal is sufficient
15 for purposes of Council's determination of land use
16 consistency.

17 Four, Sagebrush has not submitted to the
18 County an application for change in land use plans and
19 zoning ordinances.

20 From the foregoing findings of fact, we would
21 submit that potentially these are the conclusions of law.
22 Pursuant to WAC 463-28-030 as a condition to the Council
23 continuing to process the application, it shall be the
24 responsibility of Sagebrush to make the necessary
25 application for change in or permission under the Kittitas

1 County land use plans or zoning ordinances and make all
2 reasonable efforts to resolve the noncompliance.

3 Two, at the request of Sagebrush, all Council
4 proceedings on the application for certification may be
5 stayed during the period when the plea for solution of
6 noncompliance is being processed by local authorities.

7 Three, Sagebrush shall submit regular reports
8 to the Council regarding the status of negotiations with
9 Kittitas County on noncompliance issues in accordance with
10 WAC 463-28-030. Such report should be submitted to the
11 Council no later than June 9, 2003 and July 7, 2003.

12 (C) Determination, which would be made from
13 the potential findings of fact and conclusions of law if
14 they are adopted by the Council.

15 From the foregoing findings of fact and
16 conclusions of law, EFSEC determines in accordance with
17 WAC 463-26-110 Sagebrush is not in compliance with WAC
18 463-28-030 in that its proposed site is not consistent and
19 in compliance with the Kittitas County land use plans or
20 zoning ordinances and then Sagebrush in order to continue
21 its application process shall make the necessary
22 application for change in or permission under the Kittitas
23 County land use plans or zoning ordinances and make all
24 reasonable efforts to resolve the noncompliance in
25 accordance with WAC 463-28-030 and submit regular reports

1 to the Council regarding the status of negotiations with
2 Kittitas County on noncompliance issues in accordance with
3 WAC 463-28-030. Such report shall be submitted to the
4 Council no later than June 9, 2003 and July 7, 2003.

5 Based upon the foregoing determination,
6 findings of fact, and conclusions an order would be
7 entered as follows:

8 One, in the event Sagebrush wishes EFSEC to
9 continue processing the application, it shall be the
10 responsibility of Sagebrush to make the necessary
11 application for change in or permission under the Kittitas
12 County land use plans or zoning ordinances and make all
13 reasonable efforts to resolve the noncompliance in
14 accordance with WAC 463-28-030 and submit regular reports
15 to the Council regarding the status of negotiations with
16 Kittitas County on noncompliance issues in accordance with
17 WAC 463-28-030. Such reports shall be submitted to the
18 Council no later than June 9, 2003 and July 7, 2003.

19 In the event Sagebrush wishes EFSEC to stay
20 all proceedings herein during the period when the plea for
21 resolution of noncompliance is being processed by local
22 authorities, it should make a request therefore to EFSEC.

23 Three, in accordance with WAC 463-28-040,
24 Applicant shall report whether efforts to resolve
25 noncompliance issues with local authorities have or have

1 not been successful within 90 days after May 1, 2003 or
2 later if mutually agreed by the Applicant and EFSEC and
3 may file a written request for state preemption as
4 authorized by WAC 463-28-020 addressing the requirements
5 of WAC 463-28-040(1)(2)(4).

6 Four, in accordance with WAC 463-28-050,
7 failure of the application to file written request as
8 required by WAC 463-28-040, that is the written request
9 with the County, within the time permitted within shall be
10 sufficient grounds for the Council to recommend to the
11 Governor denial of the certification.

12 Five, in accordance with WAC 463-26-120, this
13 determination may be reopened later during the course of
14 the adjudicative proceedings by the parties to these
15 proceedings when good cause is shown.

16 Now that's the recommendation that the staff
17 and the attorney for the Council and I are making to the
18 Council. It's up to the Council though to make its own
19 determination, and it's not bound by anything that we
20 suggest or that is being suggested.

21 CHAIR LUCE: Thank you. Is there any
22 discussion among Council Members regarding the proposed
23 order, findings, and conclusions of law?

24 Jenene.

25 MS. FENTON: I have a couple questions. I'm

1 just not sure that I understood what was read, so I want
2 to make sure that I understood just a couple of things. I
3 think it appeared to be on Page 1 you indicated that the
4 current proposal is not consistent with Kittitas County
5 zoning or regional plans. You made a reference to
6 regional plans, and I think when Mr. Hurson testified he
7 talked about regional plans and then there wasn't any, so
8 I am not sure what regional means in that context.

9 JUDGE DEWELL: Yes, you're correct. We meant
10 to take that out before the proceedings were held this
11 evening. We didn't know whether the evidence in these
12 proceedings would indicate that there were regional land
13 use plans in accordance with the administrative code. It
14 was admitted this evening apparently that there were no
15 such regional plans applicable, but it was only the ones
16 from Kittitas County that were applicable, and we took it
17 out in three other places, but we just failed to take it
18 out at this point. So number two would read: Additional
19 testimony received from the public supports that the site
20 is not consistent with the local land use plans and zoning
21 ordinances in effect at the date of the application.

22 CHAIR LUCE: Yes, Jenene.

23 MS. FENTON: And there were two other places
24 that I had questions about, and in watching the Judge when
25 he was turning pages the next one appeared to be on the

1 next page. And I think I heard you say at the request of
2 Sagebrush a stay may be granted during the noncompliance
3 period, but then later towards the end of what you read I
4 thought you indicated that Sagebrush must request a stay.
5 Now have they requested or do they have to request it is
6 question number one, and then I'm not sure what either
7 means.

8 JUDGE DEWELL: What the regulation indicates
9 is that Sagebrush may apply for a stay during the time
10 that its attempting to resolve its noncompliance with the
11 County, and it doesn't have to. If it doesn't, then
12 potentially this proceeding continues to go on. If it
13 does, then the proceeding essentially stops at this point,
14 and you have to wait until that has either been resolved
15 or the alternative as provided in the regulations comes in
16 which is that they can continue to move the thing forward,
17 but there may be no compliance.

18 MS. FENTON: I guess my question is --

19 JUDGE DEWELL: Did I make that understandable
20 to you?

21 MS. FENTON: Well, no, but I'm not sure how
22 that pertains to the 90 days or does it? Our request for
23 a stay or?

24 JUDGE DEWELL: The request for a stay is
25 completely separate and apart part from the 90-day period.

1 The 90-day period is the period within which it's
2 necessary for Sagebrush to make an application to the
3 County to comply with its land use ordinances, and that's
4 what the 90 days relates to. The other provision which
5 relates to a stay of proceedings doesn't have a time limit
6 on it.

7 MS. FENTON: What is the 90-day period?
8 When did that start?

9 JUDGE DEWELL: That 90-day period according
10 to what we are proposing in this would be from May 1
11 because that's when we're having the land use hearing.
12 That would be today.

13 MS. FENTON: Thank you.

14 CHAIR LUCE: Any other questions from
15 Council Members?

16 Mr. Sweeney.

17 MR. SWEENEY: I would like to move the
18 findings of fact, conclusions of law, and determination as
19 read by Judge Dewell to be drafted up in an order and put
20 up in an order and approved by the Council tonight.

21 JUDGE DEWELL: All right. We've had a
22 motion. Is there a second?

23 MR. FRYHLING: Yes, there is a second.

24 CHAIR LUCE: All right.

25 JUDGE DEWELL: I would like to suggest that

1 if the Council adopts these findings of fact, conclusions
2 of law, and determinations in the order that the actual
3 legal form, not the language here but the actual legal
4 form for the order be delegated to the Administrative Law
5 Judge to put it into an order form and delegate to me the
6 authority to sign the order then once you've adopted it.

7 CHAIR LUCE: Should we do that as an
8 amendment to the motion? Do you amend your motion to
9 provide for Judge Dewell to issue this in the appropriate
10 form?

11 MR. SWEENEY: Yes, I do.

12 CHAIR LUCE: And do we have a second?

13 MR. FRYHLING: Second.

14 CHAIR LUCE: Is there any discussion?

15 MS. FENTON: Well, I have a question about
16 the motion. Because the way it was stated it was as the
17 judge read it. Does that include the correction for the
18 regional plans?

19 CHAIR LUCE: Yes. Any other discussion
20 among Council members?

21 Have a call for the question. Question has
22 been called for.

23 Mr. Fiksdal, would you please read the roll.

24 MR. FIKSDAL: Department of Community,
25 Trade, and Economic Development.

1 MR. FRYHLING: Aye.

2 MR. FIKSDAL: Department of Ecology.

3 MR. CARELLI: Yes.

4 MR. FIKSDAL: Department of Fish and
5 Wildlife.

6 MS. FENTON: Yes.

7 MR. FIKSDAL: Department of Natural
8 Resources.

9 MR. IFIE: Yes.

10 MR. FIKSDAL: Utilities and Transportation
11 Commission.

12 MR. SWEENEY: Aye.

13 MR. FIKSDAL: Kittitas County.

14 MS. JOHNSON: Yes.

15 MR. FIKSDAL: Chair.

16 CHAIR LUCE: Yes.

17 MR. FIKSDAL: The motion passes.

18 CHAIR LUCE: The motion passes. This
19 hearing is concluded, and we will be forwarding to those
20 of you who have signed up on the mailing list all the
21 appropriate, additional copies of information and I assume
22 including this order which will also be on the EFSEC web
23 site in the not too distant future.

24 Thank you very much for coming. Adjourned.

25 * * * * *

1 (Exhibit No. 29 marked for identification
2 and admitted into evidence.)

3 (Whereupon, the public hearing was concluded
4 at 7:54 p.m.)

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1 I N D E X

2	PUBLIC TESTIMONY	PAGE
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21 E X H I B I T S

22	No.	Description	ID	AD	REJ
23	1	Written comments (Bates)	1	1	
24	2	Written comments (Fischer)	1	1	
25	3	Written comments (Burdyshaw)	1	1	

E X H I B I T S (Cont'd)					
	No.	Description	ID	AD	REJ
1					
2					
3	4	Written Comments (Fischer)	1	1	
4	5	Written Comments (Staloch)	1	1	
5	6	Written Comments (Norment/Schaller)	1	1	
6	7	Written Comments (Stewart)	1	1	
7	8	Written Comments (Garrett/Monaghan)	1	1	
8	9	Written Comments (Meffert)	1	1	
9	10	Written Comments (Green Jr.)	1	1	
10	11	Writtent Comments (Green Sr.)	1	1	
11	12	Written Comments (Howard)	1	1	
12	13	Written Comments (Kittitas County)	1	1	
13	14	Writtent Comments (Henebry)	1	1	
14	15	Written Comments (Littlefield)	1	1	
15	16	Written Comments (Kuhn)	1	1	
16	17	Written Comments (Fyall)	43	43	
17	18	Written Comments (Robertson)	43	43	
18	19	Written Comments (Schwab)	43	43	
19	20	Written Comments (Earle Price)	43	43	
20	21	Written Comments (Baldi)	43	43	
21	22	Written Comments (Lindstrom)	43	43	
22	23	Written Comments (Oslund)	43	43	
23	24	Written comments (Williams/Rebound)	43	43	
24	25	Written Comments (Wickwire)	43	43	
25	26	Written Comments (Garrett)	43	43	

E X H I B I T S (Cont'd)

1	No.	Description	ID	AD	REJ
2	27	Written Comments (Monaghan)	43	43	
3	28	Written Comments (Chance/Parsons)	43	43	
4	29	Excerpts from Kittitas County Ord.	57	57	
5					
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A F F I D A V I T

I, Shaun Linse, CCR, Certified Court Reporter,
do hereby certify that the foregoing transcript
prepared under my direction is a true and accurate
record of the proceedings taken on May 1, 2003,
in Ellensburg, Washington.

Shaun Linse, CCR

CCR NO. LI-NS-ES-M4020H