

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2003-01

SAGEBRUSH POWER PARTNERS, L.L.C.

KITTITAS VALLEY WIND
POWER PROJECT

COUNCIL ORDER NO. 776

ORDER ON CONSISTENCY WITH
LOCAL AND REGIONAL AND USE
PLANS AND ZONING ORDINANCES

This matter having come before the ENERGY FACILITY SITE EVALUATION COUNCIL on May 1, 2003, at Ellensburg, Washington, pursuant to RCW 80.50.090 (2), WAC 463-26, WAC 463-28 and WAC 463-42-362, in order to conduct a public hearing to determine the consistency of the proposed project with local and regional land use plans and zoning ordinances.

Background and Procedural matters:

On January 13, 2003, Sagebrush Power Partners L.L.C., a wholly owned subsidiary of Zilkha Renewable Energy, "Sagebrush" or the Applicant herein, submitted application No. 2003-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Kittitas Valley Wind Power Project (herein the "Project"), an approximately 182-megawatt wind turbine electrical generation facility consisting of 121 wind generation turbines. On April 10, 2003, the Council issued a Notice of Intent to Hold a Land Use Hearing on May 1, 2002, at 6:00 p.m., pursuant to Chapter 80.50.090 of the Revised Code of Washington, and Chapter 463-26 of the Washington Administrative Code, for the purpose of determining if the proposed Kittitas Valley Wind Power Project site is consistent with Kittitas County or regional land use plans and zoning ordinances.

Hearing Procedure:

The hearing was convened at 6:00 p.m. on May 1, 2003, at the Kittitas County Fairgrounds, Ellensburg, Washington, with the following Council members present, to wit: Chair Jim Luce, and Council members, Richard Fryhling (Community, Trade & Economic Development), Charles Carelli (Department of Ecology), Jenene Fenton (Department of Fish & Wildlife), Tony Ifie (Department of Natural Resources), Tim Sweeney (Utilities and Transportation Commission), Patti Johnson (Kittitas County) and the Administrative Law Judge, Julian C. Dewell.

Participants:

The following persons participated in the hearing:

- Representing the Applicant: **SAGEBRUSH POWER PARTNERS, LLC**, by
Darrel Peoples, Attorney at Law, Olympia.
- Representing Kittitas County: **James Hurson**, Assistant Prosecuting Attorney,
Kittitas County.
- Counsel for the Environment: **Michael Lufkin**, Assistant Attorney General,
(AAG), Olympia.

The following additional persons presented testimony to the Council orally at the May 1, 2003, hearing: for Sagebrush; Chris Taylor; for Kittitas County, Clay White; and members of the public: Lee Bates, Jeff Howard, Andrew Johnson, Mike Robertson, John Williams, Ed Garret, Amy Oslund, Jim Stewart, Hal Lindstrom [chose not to testify], James Carmody, Geoff Saunders, Chet Morrison [chose not to testify], Dennis C. Rompell, Werner Hillemann, Lawson Schaller, Desmond Knudson and Chris Hall.

Land Use Hearing Exhibits 1 through 29, summarized in Attachment A, were entered into the record and are incorporated by reference herein.

The Statute:

RCW 80.50.090 provides that the Council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances.

The Regulations:

WAC 463-26-040 and 050 provide generally that the hearing shall be adversarial in nature and shall be held to determine whether the proposed facility is consistent and in compliance with county or regional land use plans or zoning ordinances.

WAC 463-28-010, et. seq., provides for determination by the Council over whether the state should preempt local land use plans or zoning ordinances, for determination of whether the application is or is not consistent and in compliance with existing land use plans or zoning ordinances in effect at the date of the application, and for the hearing procedure and other matters.

WAC 463-42-362 provides the requirements for the preparation of the Application for Energy Facility Site Certification pursuant to Chapter 80.50 RCW. WAC 463-42-362

provides for the requirement for "Built environment--Land and shoreline use", detailing the matters to be considered, including the submittal of land use plans and zoning ordinances.

The Hearing:

Based on the evidence, testimony and exhibits produced at the Hearing on May 1, 2003, the Council, after fully considering such matters, upon Motion duly made and seconded, adopted Findings of Fact, Conclusions of Law, a Decision and an Order and directed that the Administrative Law Judge put such Order in proper form, and sign and file such Order, in accordance with the Motion duly adopted by the Council. Based upon such Motion, the following are hereby entered, to wit:

A. Findings of Fact:

1. Both witnesses for Kittitas County and witnesses for Sagebrush testified that, under Kittitas County land use plans, the site is not consistent with local land-use plans and zoning ordinances in effect at the date of the application. [*See Land Use Exhibit 13*].

2. Additional testimony received from the public supports that the site is not consistent with local land-use plans and zoning ordinances in effect at the date of the application. [*See Land Use Exhibits 1 through 12, and 14 through 29*]. Members of the public also brought to the Council's attention the Scenic Byway legislation as it applies to State Highway 97.

3. With regards to the submittal of land use plans pursuant to the requirement of WAC 463-42-362, WAC 463-42-362 does not specify land use survey distances for wind power projects. However, WAC 463-42-362 (1) (d) specifies that in the case of pipelines and electrical transmission routes, land use plans must be submitted for one mile either side of the centerline. Kittitas County is the only jurisdiction within one mile of the turbine and related transmission facilities siting center-line. The Applicant has submitted such land-use plans and zoning ordinances to EFSEC, as required by WAC 463-42-362(1). The Council hereby finds that such submittal is sufficient for the purposes of Council's determination on land-use consistency.

4. As of May 1, 2003, Sagebrush has not submitted to Kittitas County an application for change in land use plans and zoning ordinances.

B. Conclusions of Law:

1. Pursuant to WAC 463-28-030, as a condition to the Council continuing to process the application, it shall be the responsibility of Sagebrush to make the necessary application for change in, or permission under, the Kittitas County land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance.

2. At the request of Sagebrush, all Council proceedings on the application for certification may be stayed during the period when the plea for resolution of noncompliance is being processed by local authorities.

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

C. Determination:

From the foregoing Findings of Fact and Conclusions of Law, EFSEC determines, in accordance with WAC 463-26-110, that Sagebrush's proposed site is not consistent and in compliance with Kittitas County land use plans or zoning ordinances and that Sagebrush, in order to continue with its Application process, shall make the necessary application for change in, or permission under, the Kittitas County land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance, in accordance with WAC 463-28-030 (1), and submit regular reports to the Council regarding the status of negotiations with Kittitas County on noncompliance issues, in accordance with WAC 463-28-030 (3). Such reports shall be submitted to the Council no later than June 9th, 2003, and July 7th, 2003.

ORDER: Based upon the foregoing Findings of Fact, Conclusions of Law and the Council Determination, it is ordered as follows:

1. In the event Sagebrush wishes EFSEC to continue processing the application, it shall be the responsibility of Sagebrush to make the necessary application for change in, or permission under, the Kittitas County land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance, in accordance with WAC 463-28-030 (1), and submit regular reports to the Council regarding the status of negotiations with Kittitas County on noncompliance issues, in accordance with WAC 463-28-030 (3). Such reports shall be submitted to the Council no later than June 9th, 2003, and July 7th, 2003.

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

3. In accordance with WAC 463-28-040, the Applicant shall report whether efforts to resolve noncompliance issues with local authorities have or have not been successful within ninety days after May 1, 2003, or later, if mutually agreed by the Applicant and EFSEC, and may file a written request for state preemption, as authorized in WAC 463-28-020, addressing the requirements of WAC 463-28-040 (1)-(4).

4. In accordance with WAC 463-28-050, failure of the Applicant to file the written request as required in WAC 463-28-040, within the time permitted, shall be sufficient grounds for the council to recommend to the governor denial of certification.

5. In accordance with WAC 463-26-120, this determination may be reopened later, during the course of the adjudicative proceeding by the parties to these proceedings, when good cause is shown.

DATED: in Olympia, Washington this _7th___day of May, 2003.

WASHINGTON STATE ENERGY
FACILITY SITE EVALUATION COUNCIL

_____/S/_____
Julian C. Dewell, Administrative Law Judge

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Attachment A: Summary of Land Use Exhibits

- Exhibit 1: Zilkha Wind Farm (Bates), Received 4/14/2003
- Exhibit 2: [Land-Use comment] (Fischer), Received 4/21/2003
- Exhibit 3: Kittitas Valley Wind Power Project (Burdyslaw), Received 4/25/2003
- Exhibit 4: [Land-Use Comment] (Fischer), Received 4/28/2003
- Exhibit 5: [Land-Use Comment](Staloch), Received 4/28/2003
- Exhibit 6: Kittitas Cty Wind Power Project - Land Use Hearing May 1, 2003 (Norment/Schaller), Received 4/29/2003
- Exhibit 7: Zilkha Wind Farm Project in Kittitas County (Stewart), Received 4/29/2003
- Exhibit 8: Sagebrush Power Partners Application (Garret/Monaghan), Received 4/30/2003
- Exhibit 9: Zilkha/Sagebrush Application (Meffert), Received 4/30/2003
- Exhibit 10: Kittitas wind-farm projects (Green Jr.), Received 4/28/2003
- Exhibit 11: Kittitas Wind Power (Green Sr.), Received 4/28/2003
- Exhibit 12: Sagebrush Power Partners, L.L.C. (Howard), Received 4/30/2003
- Exhibit 13: Kittitas Valley Wind Power Project/Land use Consistency Hearing Comments (Kittitas County), Received 4/30/2003
- Exhibit 14: Zilkha Wind Farm Proposal (Henebry), Received 5/1/2003
- Exhibit 15: Kittitas Valley Wind Power: Land Use Hearing (Littlefield), Received 5/1/2003
- Exhibit 16: Kittitas Valley Wind Power: Land Use Hearing (Kuhn), Received 5/1/2003
- Exhibit 17: Zilkha (Fyall), Received 5/1/2003
- Exhibit 18: Testimony at the Kittitas Valley Wind Power project Land use hearing - May 1, 2003 (Robertson), Received 5/1/2003
- Exhibit 19: [Land-Use Comment](Schwab), Received 5/1/2003
- Exhibit 20: Public testimony of Earle Price, Received 5/1/2003
- Exhibit 21: [Land-Use Comment](Baldi), Received 5/1/2003
- Exhibit 22: Ellensburg hearing on consistency of Zilkha wind power project with Kittitas County zoning regulations (Lindstrom), Received 5/1/2003
- Exhibit 23: [Land-Use Comment](Oslund), Received 5/1/2003
- Exhibit 24: Application 2003-01 (Williams/Rebound), Received 5/1/2003
- Exhibit 25: [Land-Use Comment](Wickwire), Received 5/1/2003
- Exhibit 26: [Land-Use Comment](Garrett), Received 5/1/2003
- Exhibit 27: [Land-Use Comment](Monaghan), Received 5/1/2003
- Exhibit 28: Siting for the Proposed Zilkha Wind Power Project (Chance/Parsons), Received 5/1/2003
- Exhibit 29: [Land-Use Comment] Excerpts from Kittitas County Ordinances, Received 5/1/2003