

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

**In the Matter of
Application No. 2004-01**

**WIND RIDGE POWER PARTNERS,
L.L.C.**

WILD HORSE WIND POWER PROJECT

COUNCIL ORDER NO. 791

**ORDER ON CONSISTENCY WITH
LOCAL AND REGIONAL LAND USE
PLANS OR ZONING ORDINANCES**

This matter came on and was commenced before a majority of the members of the ENERGY FACILITY SITE EVALUATION COUNCIL (EFSEC or Council) on April 22, 2004, at Ellensburg, Washington, pursuant to Revised Code of Washington (RCW) 80.50.090, Washington Administrative Code (WAC) Chapters 463-26 and 463-28, in order to conduct a public hearing to determine the consistency of the proposed project site with local and regional land use plans or zoning ordinances. This matter was reconvened and decided before all members of EFSEC on June 7, 2004, at a land-use hearing held in Olympia, Washington.

Background and Procedural Matters:

On March 9, 2004, Wind Ridge Power Partners, L.L.C., a wholly owned subsidiary of Zilkha Renewable Energy (Applicant), submitted application No. 2004-01 to EFSEC to construct and operate the Wild Horse Wind Power Project (Project), an approximately 312-megawatt wind turbine electrical generation facility consisting of up to 158 wind generation turbines. The proposed Project would be located along the ridge tops of Whiskey Dick Mountain, two miles north of Vantage Highway, and 11 miles east of the city of Kittitas. On March 30, 2004, the Council issued a *Notice of Public Informational Meeting, Land-Use Hearing, and Scoping Meeting Under the State Environmental Policy Act*. On April 22, 2004, at 7:15 p.m., pursuant to RCW 80.50.090 and Chapter 463-26 WAC, the Council convened a land-use hearing at the Kittitas County Fairgrounds, Ellensburg, Washington, to determine if the proposed Wild Horse Wind Power Project site is consistent with local and regional land use plans or zoning ordinances.

Hearing Procedure:

The following Council members were present: Acting Chair Tony Ifie (Department of Natural Resources), Hedia Adelsman (Department of Ecology), Chris Smith Towne

(Department of Fish & Wildlife), Richard Fryhling (Department of Community, Trade, and Economic Development), and Patti Johnson (Kittitas County). Council Chair James Luce and Tim Sweeney (Utilities and Transportation Commission) were excused and absent. Adam E. Torem, Administrative Law Judge of the Office of Administrative Hearings, presided over the hearing.

Participants:

Representing the Applicant: **Darrel Peeples**, Attorney at Law
 Chris Taylor, Wind Ridge Power Partners L.L.C.

Representing Kittitas County: **James Hurson**, Assistant Prosecuting Attorney
 Clay White, Planning Department

Counsel for the Environment: **John Lane**, Assistant Attorney General

The following additional persons presented testimony to the Council orally at the April 22, 2004, hearing: Sonja Ling, Renewable Northwest Project; Desmond Knudson; David Boyovich; Jeff Howard; and Steven Verhey.

The Applicant and the County stipulated that the Project site as proposed is currently inconsistent with local land use plans and zoning ordinances. The applicant did not provide certificates of consistency pursuant to WAC 463-26-090.

Two written comments were received in the EFSEC office by the April 22, 2004 deadline, and are hereby entered into the record as land use exhibits, and are incorporated by reference herein: letter dated April 22, 2004, from Sonja Ling on behalf of Renewable Northwest Project (Land Use Exhibit 1); and letter dated April 22, 2004, from Clay White on behalf of Kittitas County Community Development Services (Land Use Exhibit 2).

Governing Statute and Regulations:

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 local and regional land use plans or zoning ordinances.

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

Chapter 463-28 WAC provides for a process for resolving land use inconsistencies; applications for state preemption of land use plans and zoning ordinances; and Council

determination of whether the state should preempt local and regional land use plans or zoning ordinances when an application is not consistent with such plans or ordinances in effect on the date of application.

Council Action Upon Hearing:

Based on the testimony provided, the stipulation of the Applicant and the County, and all other evidence produced at the hearing, or timely submitted to EFSEC offices, the Council, having fully considered all such matters, adopts the following Findings of Fact, Conclusions of Law, Determination, and Order:

A. Findings of Fact:

1. Wind Ridge and Kittitas County stipulated that the site is not consistent with local and regional land use plans or zoning ordinances in effect as of the date of the application.

2. Kittitas County identified the following specific inconsistencies:

- a. The proposed location of the Project within Kittitas County is inconsistent with local land use provisions regarding the placement of wind farms in the county, including Kittitas County Code (KCC) Chapter 17.61A, specifically §17.61A.040(B) and §17.61A.040(C), and the Kittitas County Comprehensive Plan, specifically General Planning Objective (GPO) 6.34.
- b. The proposed location of a concrete batch plant, as part of the proposal, within one of the County's Forest and Range Zoning Districts is inconsistent with KCC Chapter 17.56.020.
- c. The proposed location of special utilities associated with the Project is inconsistent with KCC §17.61.020(F).

3. Additional comment received from the public supports the Project's stipulated inconsistency with local land use plans and ordinances.

4. Wind Ridge and Kittitas County shall attempt to resolve the land-use inconsistency no later than Monday August 30th, 2004, which allows a reasonable period of time under WAC 463-28-030.

B. Conclusions of Law:

1. The Project site is not consistent and in compliance with local land use plans and zoning ordinances. WAC 463-26-110.

2. Pursuant to WAC 463-28-030(1), as a condition to the Council continuing to process this application, the Applicant shall make all reasonable efforts with Kittitas County to resolve the existing land use inconsistencies in the Project application.

3. Pursuant to WAC 463-28-030(2), at the request of the Applicant, all Council proceedings may be stayed during the period when the request for resolution of noncompliance is being addressed with Kittitas County.

4. Pursuant to WAC 463-28-030(3), the Applicant is required to make regular reports to the Council regarding the status of its efforts and negotiations with Kittitas County on land use issues.

C. Determination and Order:

Based upon these Findings of Fact and Conclusions of Law, the Council determines that the Applicant's proposed site is not consistent and in compliance with the regional land use plans or zoning ordinances of Kittitas County.

Therefore, it is hereby **ORDERED** that the Applicant shall:

1. Make all reasonable efforts with Kittitas County to resolve the existing land use inconsistencies in the Project application as a condition of the Council continuing to process this application.

2. Make monthly reports to the Council regarding the status of its efforts and negotiations with Kittitas County on land use issues no later than August 30th, 2004.

In addition, the Applicant may request a stay of Council proceedings during the period when the request for resolution of noncompliance is being processed by Kittitas County.

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

DATED and effective at Olympia, Washington, the 8th day of June, 2004.

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL

Adam E. Torem, Administrative Law Judge