

**WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**RESOLUTION NO. 328**

***AMENDMENT NO. 1  
KITITAS VALLEY WIND POWER PROJECT  
SITE CERTIFICATION AGREEMENT***

**Nature of Action**

Sagebrush Power Partners LLC, a subsidiary of Horizon Wind Energy (“Sagebrush” or “Applicant”) is the Holder of the Site Certification Agreement (“SCA”) governing the Kittitas Valley Wind Power Project (“KVVWPP” or “Project”). By letter dated May 29, 2009, Sagebrush requested that the Energy Facility Site Evaluation Council (“EFSEC” or “Council”) amend the SCA for the KVVWPP to accomplish the following:

- (1) Reduce the number of turbines allowed, eliminating certain wind turbine locations and all or portions of certain corridors;
- (2) Adjust certain wind turbine approximate<sup>1</sup> locations and corridors as shown on map appended to **Attachment 1**;
- (3) Relocate the Operations and Maintenance facility to a site further away and less visible from Hwy. 97;
- (4) Add a 6.29-acre parcel to reduce ground disturbance related to collection line routing under existing roads; and
- (5) Reduce the total project area to approximately 5,416 acres, reducing the temporary disturbance of ground area by 14.4 acres, and reducing permanent disturbance by 13.3 acres.

The primary purpose of this amendment is to reduce the number of wind turbines from 65 to 52, along with associated reduction and minimization of environmental impacts, including the impacts on non-participating residences, while maintaining the full power generation of the Project.

The amendment also accomplishes several “housekeeping” changes to resolve minor errors or ambiguities. In addition, the Amendment accepts a proposal of the Washington

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<sup>1</sup> Turbine locations in the SCA are based on the Applicant’s map, which approximated where each specific turbine would be located prior to any “micro siting” or other adjustments necessary for optimal placement of each turbine.

Department of Fish & Wildlife (“WDFW”) to delay installation of fencing of the Project’s habitat mitigation parcel. This amendment recognizes that there will be no need for fencing until cattle grazing occurs on lands adjacent to this parcel.

## **Background**

On June 22, 2007, Governor Christine Gregoire executed on behalf of the State of Washington a Site Certification Agreement (SCA) authorizing the construction and operation of the KVVPP. Among its conditions of approval, the SCA includes the following condition (“setback condition”), adopted pursuant to Council Resolution No. 826:

*SCA Article I, Section C, Subsection 7 “. . . For each turbine located within 2,500 feet of a non-participating landowner’s existing residence, micro-siting determinations shall give highest priority to increasing the distance of the turbine from that non-participating landowner’s residence, even beyond the minimum four times height setback described above, so as to further mitigate and minimize any visual impacts on that non-participating landowner. Prior to commencement of construction, the Applicant shall provide EFSEC with documentation demonstrating its engineering efforts to site the applicable turbine locations in this manner, indicating the various factors reviewed for each micro-siting recommendation.”*

The SCA was adopted after the completion of a Draft and Final Environmental Impact Statement (FEIS) under the State Environmental Policy Act (SEPA), RCW Chapter 43.21C. The Project was opposed by several intervenors, who filed an appeal with the Washington State Supreme Court. Intervenors challenged many elements of the FEIS and the SCA, including the sufficiency of the analysis and mitigation measures concerning visual, aesthetic and other environmental impacts, and the record supporting the setback condition. In a unanimous decision, the Washington Supreme Court rejected the appeal and upheld the SCA on all issues raised by intervenors. The decision affirmed the FEIS in its entirety, along with all mitigation measures and conditions of approval. *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275 (2008).

Following completion of the judicial appeal, Sagebrush refined the final layout in anticipation of the micro-siting process. It addressed in the setback condition through a combination of the following: (1) installation of higher-capacity wind turbine generators that were not previously available during the KVVPP hearing process; (2) a reduction in the total number of turbines from a maximum of 65 to a maximum of 52; (3) elimination or reduction of certain wind turbine corridors in proximity to existing residences; and (4)

adjustments of the corridors and placement of turbines approximated in the SCA. Construction is expected to commence in the fall of 2009 and to be completed in 2010.

### **Procedural Status**

EFSEC's amendment procedure is governed by chapter 80.50 RCW and chapter 463-66 WAC. Sagebrush and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, the request for amendment of the SCA was submitted in writing, on May 29, 2009.
- At its monthly meeting of June 9, 2009 the Council directed EFSEC staff to schedule an informational hearing and notification for public comment.
- Notice of the informational hearing was mailed to approximately 380 recipients. The notice advised that Sagebrush had requested an amendment to the SCA, and that an informational hearing to consider the matter would be conducted on June 23, 2009. The notice also said that comments could be made either orally at that time or in writing prior to the conclusion of the public comment period ending at 5:00 P.M. on July 10, 2009.
- The informational hearing was held in Ellensburg on June 23, 2009. Oral and written comments were received.
- On July 16, 2009, Allen Fiksdal, EFSEC's SEPA Responsible Official issued a Determination of Non-Significance (DNS).
- The Council considered the amendment request at its August 11, 2009, meeting and approved the resolution and amendment at a special open meeting on September 1, 2009.

### **Public Comment**

The comment period served as an opportunity for the public to comment on the SEPA environmental checklist and studies prepared for the Amendment, and as a "scoping" opportunity for agencies and the public, as well as on the proposed amendment. Written and oral comments were received from Wayne Bell and Michael Robertson. In a letter dated July 20, 2009, the Applicant responded to those comments. The concerns raised during the hearing and comment period by Mr. Bell and Mr. Roberson were limited exclusively to the proposed placement of two of the 52 wind turbines (turbines A-1 and A-2).

The Council also received written comments from Emily Burdyshaw, Harold Havens and the Department of Ecology. Ms. Burdyshaw's principal concern was about visual impacts from Highway 97, Mr. Havens requested alternate locations for turbines near his residence and the Department of Ecology noted the need to implement a Stormwater Pollution Prevention Plan and to secure water rights for use of water for dust control.

The comment letters and the Applicant's response are on file with EFSEC and available to the public

### **Factual setting**

In the initial proposed turbine configuration, several non-participating<sup>2</sup> residences were less than 2,500 feet from one or more approximated turbine sites. Governor Gregoire by letter of June 22, 2007, directed EFSEC to determine whether the setback could be increased for non-participating residences without adversely affecting the economic viability of the Project.<sup>3</sup> The Governor recommended that effort be made to accommodate non-participating landowners concerned with the aesthetic and environmental effects of the turbine structures and operations. In response, EFSEC modified and the governor accepted a slightly revised SCA. Instead of making changes in the actual turbine placement, the approved SCA requires consideration of visual impacts as the highest priority during the final siting ("micro-siting") of turbines located within 2,500 feet of non-participating residences. The SCA was appealed to the Washington State Supreme Court, which denied the appeal and affirmed the Council order and the SCA on all grounds.

The applicant makes this proposal as the first element of micro-siting, to comply with the setback review mandate of the SCA. The proposal reduces the total number of turbines from 65 to 52, using newly-developed, higher-capacity turbines to maintain the approved power output. The most significant changes in terms of distance and density occur in one area. There, six towers have been removed and several have been moved.

The following diagram shows the removal of Towers F1 through F6 and the relocation of towers A1 and A2.

Mr. Robertson and Mr. Bell each own a residence with turbines remaining within the 2,500-foot radius. Before the proposed redesign, the Robertson residence was within 1,360 feet of Turbine A1 and 2,120 feet of A2. After the redesign, the distance from A1 is increased 420 feet, to 1,780 feet and the distance from A2 is decreased by 160 feet to 1,960 feet. The shifts increase the combined distance of the two turbines from Robinson residence by 260 feet.

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<sup>2</sup> Non-participating real property is property not leased or purchased to become a portion of the Project. "Non-participating residences" are those situated on non-participating real property.

<sup>3</sup> "I am directing EFSEC to reconsider Article I (C)(7) of the proposed Site Certification Agreement ("Agreement") pertaining to turbine setbacks from adjacent land owners' residences without signed agreements with Sagebrush Power Partners, LLC., my directive . . . is solely focused on the need to determine on this particular project whether additional setbacks beyond the four times height (4xh) requirement for non-participating landowners are achievable while allowing the Project to remain economically viable."

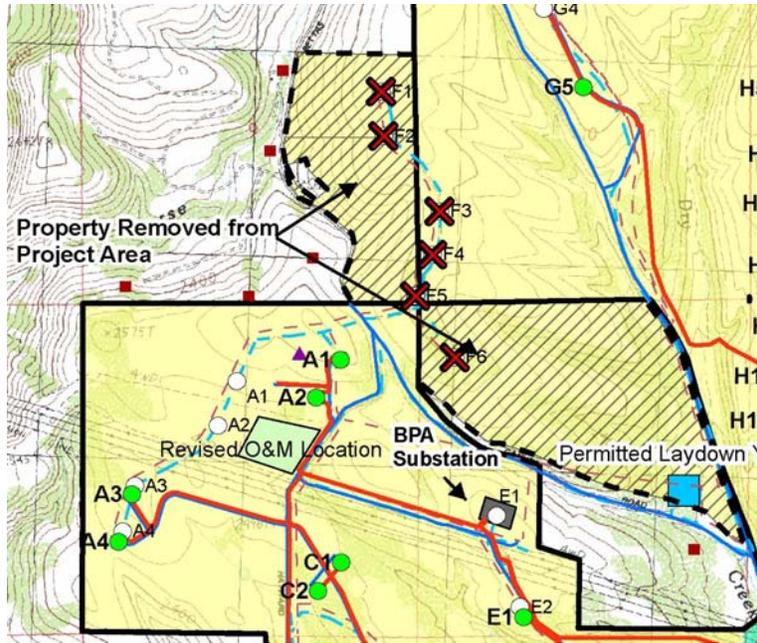


Diagram from “SCA Amended Revised Layout,” Exhibit 1 to this Resolution.

The Bell residence was within 2,500 feet of five turbines prior to the proposed shifts; under this proposal, only two turbines are within that distance and three are entirely removed. One of the two remaining turbines is closer than any of the turbines that were approximated in the approved SCA. The relative distances are shown in these diagrams (from Exhibit A (Robertson) and Exhibit B (Bell)):

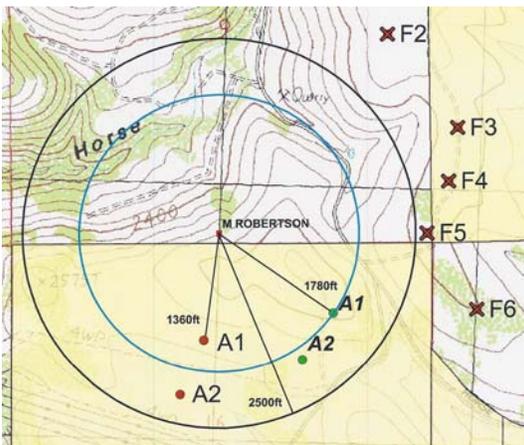


Exhibit A, the Robertson property

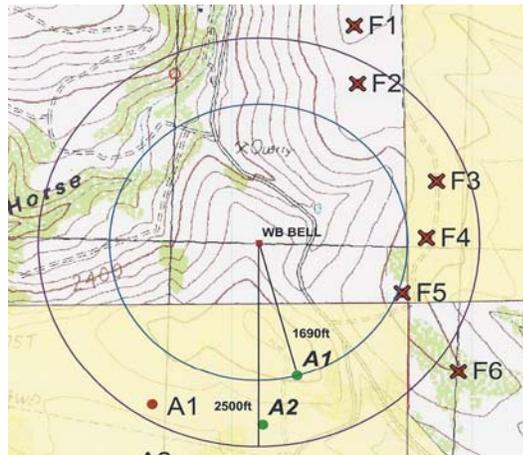


Exhibit B, the Bell property

Mr. Bell and Mr. Robertson complained in their oral and written comments about the placement of the two remaining turbines, A1 and A2. Their concerns were: (1) the A-1 and A-2 turbines would be closer to the Robertson and/or Bell residences than shown in

the original, hypothetical layouts as approved within the micro-siting corridors; and (2) these two turbines would cause “health” effects related to “shadow flicker.” Their comment letters requested updated studies related to shadow flicker and noise, considering the precise equipment chosen by the Applicant. Mr. Robertson further urges that the amendment not be approved as it is possible that the power could be sold to the California market.<sup>4</sup>

Ms. Burdyslaw wrote that “the Certificate Holder’s claim of significant impact reduction is flawed” because “travelers on Highway 97 will have a westerly view of looming turbines in close proximity to the roadway.” She complained that the H-string turbines adjacent to Elk Springs Road has not changed and that it still “creates a dangerous situation” and “the State will be held liable if an accident happens.”

Mr. Havens requested the Council consider alternate locations for the relocated turbines B3, B4, B5, and B6 because of the “towering effect” due to the larger turbines on the ridge above his residence, or at the “very least” relocation of turbine B4 to an empty location near the “empty B2 turbine location.”

## **Discussion**

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend a SCA:

“In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare.”

WAC 463-66-050 explains that the Council's consideration of public health, safety, and welfare includes environmental concerns, as follows:

“In reviewing whether a proposed amendment is consistent with the public health, safety, and welfare, the council shall consider the short-term and long-term environmental impacts of the proposal.”

The Council has considered these factors and has concluded that the proposed amendment would be consistent with each. Each of the Council's conclusions is discussed below.

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<sup>4</sup> The Council has previously determined that this issue is irrelevant to any applicable standard for siting energy facilities under RCW Chapter 80.50. The Council reaffirms this conclusion and will not further consider this argument.

## **A. Consistency with the public health, safety, and welfare**

Under WAC 463-66-040(3) and -050, the Council must consider whether the proposed amendment would be consistent with public health, safety, and welfare. WAC 463-66-050 requires the Council to “consider the short-term and long-term environmental impacts of the proposal,” and further requires a consideration of “reasonable alternative means by which the purpose of the proposal might be achieved” along with the “availability of funding to implement the proposal.”

**1. Public health, safety and welfare:** All activities associated with the installation of the revised Facility, as amended, will be the same as those approved in the SCA. The comment letters raise issues related to public health concerning the A-1 and A-2 turbines.

The public health issue raised in the comments relates to shadow flicker. Although the record does not demonstrate that shadow flicker in fact causes adverse health effects, the SCA already imposes (and the applicant has accepted) specific measures to address shadow flicker affecting the nonparticipating landowners. These include the requirement that the Project operator stop a turbine during times when flicker would be present, upon complaint by an affected nonparticipating landowner.<sup>5</sup> In other words, the SCA requires *entire avoidance* of shadow flicker impacts on a complaint-generated basis for the Bell and Robinson properties.

The DNS was issued in full consideration of the Bell and Robinson comments and a review of the SEPA Checklist. The DNS was also issued in full consideration of the entire environmental record of the Project, including the DEIS, Supplemental DEIS, Addendum to the DEIS, and Final EIS, which have all been affirmed by the Supreme Court.

The proposed turbines have more generating capacity than those initially proposed, but are within the range evaluated in the Environmental Impact studies and approved in the SCA. *See*, FEIS Chapter 2.2. Any installed turbine must meet all conditions of approval.

Public health, safety and welfare will not be affected in any manner not previously analyzed during review of the Project application, including prior SEPA review. The change does not substantially alter the substance of the SCA or result in any detrimental effects on the public health, safety or welfare. This amendment will have no demonstrated negative effect on the health and safety of the public. Consequently, as

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<sup>5</sup> Although certain conditions apply, the Bell and Robertson residences are protected by these provisions. *See*, SCA Article VII.I.

documented in the Council's adjudicative order, in the Project FEIS and in the SCA, the proposed amendment is consistent with the public health, safety and welfare.

**2. Environmental impacts:** The proposal is within the range of alternatives analyzed in the FEIS, and public health and safety issues are addressed above. The amendment will therefore not cause any significant adverse environmental impacts. The substance of existing SCA conditions and environmental mitigation requirements is not altered in any manner by the requested amendment. Moreover, this Amendment will result in the reduction of temporary and permanent ground disturbance (with associated reductions in habitat impacts), will reduce the number of turbines, will eliminate turbines and turbine corridors, and will significantly reduce both localized and regional visual and aesthetic impacts. All of these measures will eliminate, reduce and minimize impacts below the levels addressed in the FEIS.

**3. Visual impacts.** The Bell and Robinson comments emphasize that one or both of the proposed alternative locations for the turbines A1 and A2 are closer to their residences than in the diagram accepted in the adjudicative order. That diagram did not attempt to show the exact locations of turbines, but instead to indicate general areas subject to specific "micro-siting" analysis. While still subject to further micro-siting analysis, the proposed amendment reflects an attempt to address concerns relating to visual impacts of turbine towers farther than four times tower height but still within 2,500 feet from a non-participating residence.

### **Analysis.**

The following changes are proposed related to the turbines within 2,500 feet from the Robertson and Bell residences:

**Robertson Residence:** The amendment request proposes relocating the A-1 turbine from the original anticipated distance from the Robertson residence of approximately 1,360 feet to a distance of 1,780 feet—a 420-foot increase. For the A-2 turbine, the proposal is to move the turbine from the anticipated 2,120 feet to 1,960 feet, —160-feet closer. While the A-2 turbine would therefore be closer than originally anticipated, that distance is balanced by the greater increase in distance from the A-1 turbine. Although the anticipated locations of the F string turbines were not within 2,500 feet of the Robertson residence, those turbines would have been situated just beyond 2,500 feet from the residence, and would have been within the primary view corridor of the Robertson residence. In applying the setback condition, we note the reduction of impacts on the Robertson residence by removal of those turbines. In the totality of the circumstances, the Council finds that the Applicant has satisfied the spirit and intent of the setback condition as it relates to the Robertson residence. The Council therefore finds that the Applicant has complied with the setback condition with respect to these turbine locations.

**Bell Residence:** The following changes are proposed with respect to the Bell residence:

	<b>SCA-Authorized Distance</b>	<b>Proposed Distance</b>
A1	2,300'	1,695'
A2	3,070'	2,240'
F2	2,200'	Removed
F3	2,150'	Removed
F4	1,900'	Removed
F5	1,740'	Removed

In addition, the F string originally included two additional turbines just outside the 2,500 foot distance. As the record in this proceeding shows, the primary visual orientation of both the Robertson and Bell residences is to the north. The Applicant has proposed to remove four turbines within the F string that were anticipated within 2,500 feet of the Bell residence, and two additional turbines farther than 2,500 feet. Purely in terms of the setback distance under the setback condition, the A-1 and A-2 turbines will pose substantially less significant visual impact than construction of all originally-proposed turbines would pose. With respect to the Bell residence, although the A-1 and A-2 turbines are proposed at a somewhat closer distance than the original suggested distances, the Council finds that in the totality of the circumstance, with the elimination of six view-corridor turbines initially proposed to be sited at similar or greater distances, Applicant has satisfied the spirit and intent of the setback condition with regard to these two turbines.

**Burdyslaw concerns:** Highway 97 and Elk Springs Road -- The SCA allows these turbines and Sagebrush Power has not requested modification of these locations. There is no contention that any of these turbines fall within a 2,500-foot radius from a non-participating residence. Therefore, the Council finds that there is no reason to revisit the siting of these turbines.

**Havens Residence:** Sagebrush has proposed moving turbines further from the Havens residence. The B6 turbine was proposed to be approximately 2,000 feet from the Haven residence, and is now set at 3,180 feet. The B5 turbine was proposed for about 2,100 feet, but is now set at 2,700 feet, and B4 is now set at 2,100 feet from the residence. It is not possible to move B4 to the original B2 location, as Mr. Havens suggested, because according to micro-siting engineering analysis, "wake turbulence" from other turbines would impact its performance. The Sagebrush proposal therefore

meets all EFSEC's and the Governor's requirements for consideration and placement of turbines.

**Department of Ecology:** Water Resources and Stormwater Pollution Prevention Control Plan: The provisions for use of permitted water for dust control as required by Chapter 90.03 RCW and the development of a Stormwater Pollution Prevention Plan are already requirements of the SCA.

**4. Reasonable alternative means to achieve the purpose of the proposal; Funding to implement the proposal:** Alternatives to the Project were considered in the FEIS and SCA. The Project has been reduced in size several times since its inception in on-going efforts to reduce impacts. The proposed amendment further reduces impacts through a significant reduction in the number of turbines. As such, it constitutes a "reasonable alternative means" to implement the Project proposal at a lower level of environmental significance than previously considered in the FEIS.

The proposed amendment does not change the considerations or the related findings and conclusions of either the FEIS or the SCA. Further, Sagebrush controls the Project site. Due to the ability of Sagebrush to develop property it controls (and only the property it controls), no reasonable alternative means is apparent that will efficiently achieve the objectives of this proposal—the production of renewable energy available to Sagebrush on the Project site. Sagebrush has the proven capability to fund and complete the construction of the expansion in accordance with conditions imposed in the SCA.

## **B. Consistency with applicable laws and rules**

Under WAC 463-66-040(2), the Council must consider applicable laws and rules, including chapter 43.21C RCW and chapter 197-11 WAC (the State Environmental Policy Act and SEPA rules) and WAC 463-66-070 through -080.

**1. Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC).** With its request for amendment, Sagebrush submitted a SEPA Checklist. The Council invited comments regarding the proposed amendment, including the SEPA Checklist. Members of the public provided written and verbal comments related to the SEPA Checklist. Sagebrush provided a comprehensive response to the comment letters, clarifying the proposal in written materials submitted to EFSEC.

In general, SEPA requires an agency to perform a threshold determination to determine whether a proposed action will have a significant adverse effect on the environment. *See* WAC 197-11-310. The Council's SEPA Responsible Official, Allen Fiksdal, has reviewed the proposed changes to the SCA and the SEPA Checklist, and issued a Determination of Non-Significance. The Responsible Official considered and responded to the comments and made a decision fully informed by the entire SEPA record for the KVVPP. Accordingly, the Responsible Official has determined that the Amendment

will not have a significant adverse effect on the environment, and that all environmental impacts have been fully considered during the SEPA process as documented in the FEIS. The Council hereby accepts that determination, and acknowledges the measures taken by Sagebrush to modify the Project to further avoid, minimize and mitigate environmental impacts. The Council concludes that this Amendment reduces the environmental impacts below the levels found acceptable in the FEIS.

## **2. Consistency with WAC 463-66-070 and -080.**

WAC 463-66-080 provides:

“An [SCA] amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor.”

On the other hand, WAC 463-66-070 provides:

“An amendment request which does not substantially alter the substance of any provisions of the SCA, or which is determined not to have a significant detrimental effect upon the environment, shall be effective upon approval by the council. Such approval may be in the form of a council resolution.”

Based on its previous findings that (i) the proposed amendment has no adverse environmental impacts and no adverse impacts on public health, safety, and welfare; and (ii) does not alter the Certificate Holder’s legal responsibilities under the SCA, the Council finds that this amendment may be approved by Council resolution pursuant to WAC 463-66-070. As noted above, the Council concludes that this Amendment reduces the environmental impacts below the levels found acceptable in the FEIS

## **C. Consistency with intention of the original SCA**

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the original SCA. In general, the intention of every SCA is to grant state authorization to a certificate holder to construct and operate an energy project that has been determined to be in the interest of the State of Washington in a manner consistent with all pertinent environmental requirements. In return, the certificate holder commits to comply with the terms of the SCA.

As detailed in the SEPA Checklist, all areas proposed for temporary and permanent impacts have been studied for environmentally sensitive features and cultural resources. The revised Project area does not contain any environmentally sensitive features and the revised Facility will have minimal (and reduced) impacts on habitat.

**Compliance with Setback Condition.** The principal condition in the SCA at issue in these proceedings is the “setback condition,” SCA Article I, Section C, Subsection 7. While comments and letters have taken issue with the Applicant’s compliance with the setback condition as it relates to the A-1 and A-2 turbine locations, the Council notes that the Amendment request proposes removing all or portions of turbine strings and individual turbine locations in their entirety throughout the Project area, and significantly increasing many setback distances from residences throughout the Project area. Only three non-participating property owners have negatively commented on this proposal, compared with the many non-participating property owners who voiced opposition to the Project during the application and adjudicative proceedings.

The Applicant has analyzed a series of “constraints” related to the reasons the A-1 and A-2 turbine locations have been chosen. The Applicant’s constraint analysis is attached hereto as Attachment 2, and is accepted by the Council. As determined in the SCA and in prior Council Orders in these proceedings, the Council considers the Project as a single integrated energy facility, not as single wind turbine generators. The Applicant is responsible for complying with all conditions of the SCA. That said, the Council must assess compliance with the setback condition in consideration of the overall efforts by the Applicant to reduce the visual impacts to non-participating residences. Further, the Council notes that, while the Applicant has made considerable efforts to increase setback distances beyond four times (“4X”) the maximum height of the turbines, the minimum setback requirement remains the 4X tip height.

**Conclusion Regarding Setback Condition Compliance:** The Council finds that the Applicant has complied with the setback condition by giving “highest priority to increasing the distance of the turbine[s] from [the] non-participating landowner’s residence, even beyond the minimum four times height setback,” so as to “further mitigate and minimize any visual impacts on that non-participating landowner.” The Applicant has provided sufficient documentation to EFSEC “demonstrating its engineering efforts to site the applicable turbine locations in this manner, indicating the various factors reviewed for each micro-siting recommendation.” We note that without these location modifications, the Applicant would retain its rights to construct all turbines within the F turbine string. The Council finds that such an outcome would present a greater level of environmental impact than the number and location of turbines approved by this Amendment.

The Certificate Holder will implement all mitigation measures identified in the SCA for construction and operation of the Project, as amended. The Council finds that the proposed changes to the SCA are consistent with the intent and all requirements and conditions of the SCA.

#### **D. Conclusion**

The Council concludes as follows: (1) the proposed amendment of the Project SCA to allow alteration of the project as proposed is consistent with the public health, safety, and

welfare; (2) the proposed amendment is consistent with all applicable laws (including SEPA); and (3) the proposed amendment is consistent with the intent of the original SCA. The Council concludes that it is appropriate to approve an amendment to the Project SCA, necessary to reflect the proposed changes to the Project; *Provided*, Sagebrush shall continue to implement all mitigation measures and conditions identified in the SCA, as amended by this decision.

## RESOLUTION

For the foregoing reasons, the Council amends the Kittitas Valley Wind Power Project SCA to allow Sagebrush to proceed with construction of the Facility with the following changes:

- The proposed Amendment Number 1 to the SCA for the final location of wind turbine generators (subject to micro-siting to address unanticipated localized site constraints) is approved, with construction allowed in the locations shown on the revised Project layout, **Attachment 1** hereto, and in accordance with the amended legal description appended to the amended SCA. The locations of turbines set out in this resolution shall be the minimum distance from the existing Havens, Bell and Robertson residences. The identified segments of Project real property proposed for deletion from or addition to the Project area are approved and the Project site boundary is amended accordingly.
- The “housekeeping” amendments as summarized in the September 3, 2008 letter from EFSEC (**Attachment 3** hereto) to the Applicant are approved.
- The request by WDFW to delay installation of fencing of 539-acre habitat mitigation parcel described in SCA Condition No. IV. E.8 is approved, with the delay to continue until such time as required to prevent cattle from grazing on this parcel. Condition No. IV.E.8 is not changed, but implementation is simply delayed until the circumstance requiring the condition occurs.
- All applicable unchanged SCA conditions and mitigation measures continue to apply to the construction and operation of the Facility, in addition to the provisions amended by adoption of this Resolution.
- This Resolution is incorporated into the KITTITAS VALLEY WIND POWER PROJECT Site Certification Agreement as Attachment No. 7.

DATED at Olympia, Washington and effective on September 2, 2009.

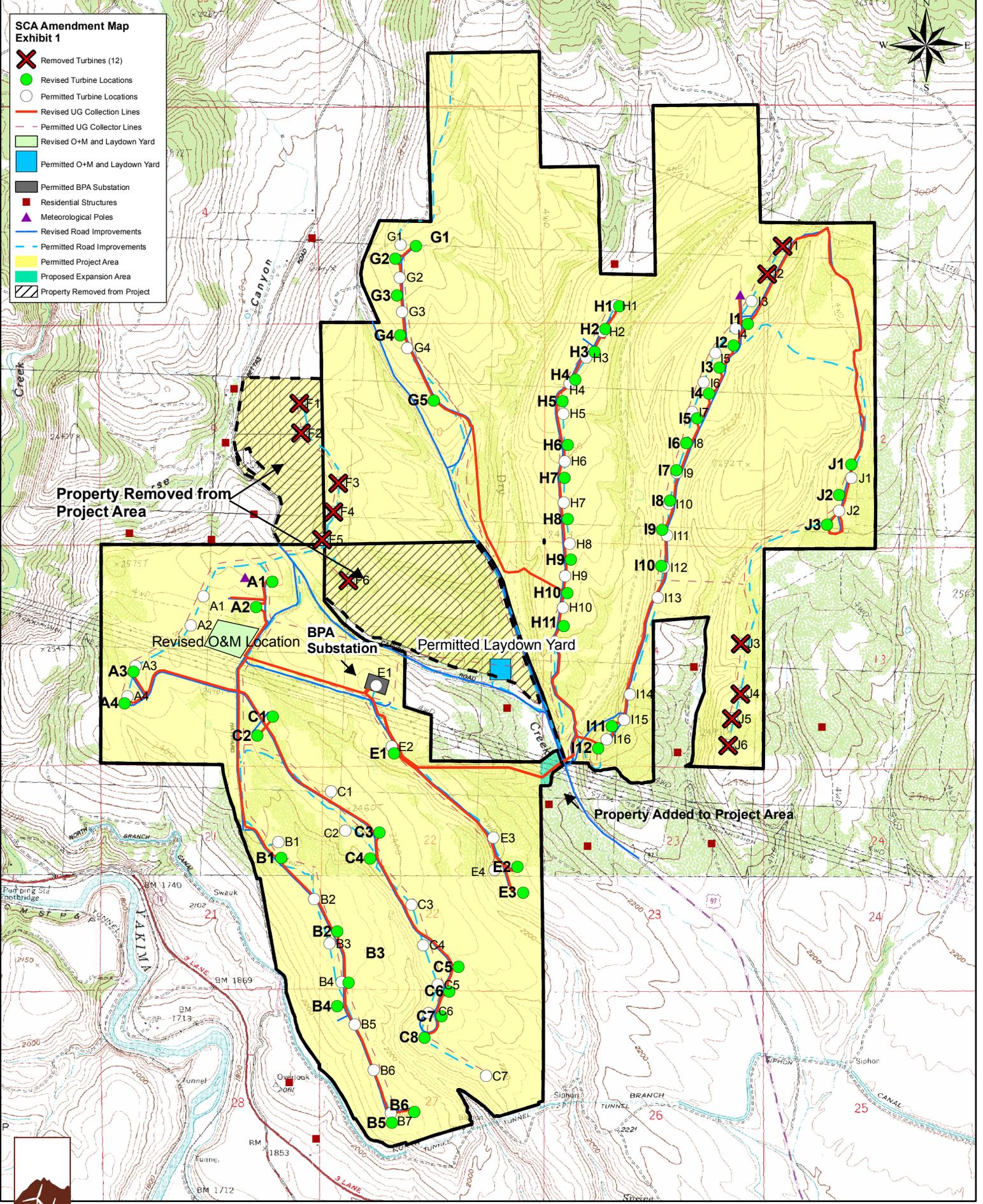
WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: \_\_\_\_\_  
Dick Byers, Designated Council Member

Attested: \_\_\_\_\_  
Allen J. Fiksdal, EFSEC Manager

- Attachments:**
- 1. Amended Project Map and Final Wind Turbine Generator Layout**
  - 2. Applicant's Analysis of Constraints Limiting Location of A-1 and A-2 Turbines**
  - 3. September 3, 2008 letter from Allen Fiksdal, Concerning "housekeeping amendments"**

- SCA Amendment Map Exhibit 1**
-  Removed Turbines (12)
  -  Revised Turbine Locations
  -  Permitted Turbine Locations
  -  Revised UG Collection Lines
  -  Permitted UG Collector Lines
  -  Revised O+M and Laydown Yard
  -  Permitted O+M and Laydown Yard
  -  Permitted BPA Substation
  -  Residential Structures
  -  Meteorological Poles
  -  Revised Road Improvements
  -  Permitted Road Improvements
  -  Permitted Project Area
  -  Proposed Expansion Area
  -  Property Removed from Project



**SCA Amendment Revised Layout Exhibit 1**



## ATTACHMENT 2

### **Applicant's Constraints Limiting Location of A-1 and A-2 Turbines**

The Applicant proposes final locations for the A-1 and A-2 turbines. These locations were selected after extensive engineering analysis and efforts to locate these turbines at the maximum distance from existing residences. The following constraints significantly restrict alternative locations and necessitate the proposed locations:

**1. Transmission line setback constraint, SCA Article I, Section C.7:** In accordance with the SCA, turbines may not be constructed at a distance of less than maximum turbine tip height from existing transmission lines. The Applicant imposes its own standard, which is slightly more conservative—1.1 times maximum turbine tip height from the existing transmission lines (448 feet for the selected WTGs). In order to install the selected turbines, which enable the reduction proposed in this amendment request, the original hypothetical locations of A-1 and A-2 were not possible with the larger turbine equipment. Consequently, increased distances were needed to enable a sufficient setback from the Puget Sound Energy (“PSE”) transmission line running east and west across the Project. These turbines could not be moved to the south due to the same setback restrictions from the BPA transmission lines. The enclosed map, Exhibit C, demonstrates this constraint, related to the PSE transmission lines.

**2. Non-participating residential setback constraint:** Also in accordance with the setback condition, for the larger turbine model, the A-1 turbine location needed to be moved to meet the 4X setback from the Robertson residence. This caused its shift to the east, putting this turbine in closer proximity to the Bell residence. This relocation caused a significantly greater distance from the Robertson residence but a lessened distance from the Bell residence. For both residences, the proposed location meets or exceeds the 4X tip height setback requirement.

**3. Road setback constraint:** As shown on Exhibits A and B, Hayward Road runs in a north-south direction, situated to the east of the proposed A-1 and A-2 locations. The SCA requires a minimum distance of maximum turbine height from the outermost edge of county roads. This constraint limits further movement to the east.

**4. Terrain and wind resource constraint:** Also limiting further movement to the east, the terrain drops off precipitously. This significantly negatively affects the available wind resource, rendering further movement to the east impracticable.

**5. Cultural resource constraints:** As noted in the cultural resource information filed confidentially with EFSEC, a historically significant irrigation ditch is situated near Hayward Road, also to the east of the proposed locations. Further movement to the east would harm this resource and is inconsistent with efforts to minimize impacts to cultural resources in accordance with the ASC and FEIS. The proposed locations take advantage of an existing jeep trail as an access road, minimizing ground disturbance and avoiding impact to the historically significant irrigation ditch.

**6. Location constraints to the west of original hypothetical A-1 and A-2 turbine locations:** The Applicant considered locations to the west of the original locations. Any area to the west is impossible due to the 541-foot mandatory property line setback (SCA Article I, Section C.7), the constraint concerning transmission lines discussed above and the mandatory 4X turbine setback for non-participating residences applicable to another residence further to the west, shown on Exhibit C.

**7. Constraints limiting relocation in other areas of the Project:** Due to FAA flight paths, turbine locations on G, H, I and J north of the proposed turbine locations are prohibited. Additional locations have been explored on B, C and E, with engineering determinations that the terrain (wind resource), substation, transmission lines and beam path constraints eliminate additional locations for two turbines in other Project areas. Further, the terrain and beam paths do not allow two additional turbines to be placed closer to A-3 and A-4.

**Summary of constraints:** The proposed locations for the A-1 and A-2 turbines meet all setback requirements, avoid all constraints summarized above and minimize visual impacts for all residences. The avoidance of cultural resource sites and removal of the F string corridor significantly reduced options for turbine placement. Due to a range of constraints, no other locations are suitable and, unless the F string is reinstated, the proposed locations are necessary.



STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL  
905 Plum Street SE, PO Box 43172 • Olympia, Washington 98504-3172

September 3, 2008

Mr. Darrel L. Peeples  
Attorney At Law  
325 Washington Street NE, #440  
Olympia, WA 98506

Dear Mr. Peeples:

The Energy Facility Site Evaluation Council (EFSEC) has received your letter of July 17, 2008 on behalf of Sagebrush Power Partners detailing some ambiguities and inconsistencies in the Kittitas Valley Wind Power Project (KVVWPP) Site Certification Agreement (SCA). Your letter detailed six specific SCA references where the language appears inappropriate to KVVWPP. Sagebrush requests clarification and guidance from EFSEC staff regarding these items.

Below I have cited the inconsistencies in the KVVWPP SCA and provided a brief response:

1. Article IV, Section E, Number 9 (Page 25): The imposition of 25 miles per hour speed limit on all roads within the project area, which should be applied to only private roads within the project. County-owned roads have their own locally-enacted speed limits and cannot be changed by the SCA.
2. Article IV, Section E, Number 10, (Page 25): The prohibition of hunting within the project area during construction, which is more appropriately addressed in Sagebrush Power Partners' leases with the landowners. We recognize that EFSEC has no jurisdiction over a landowner's activities on their own private property. Therefore it seems more appropriate for Sagebrush Power Partners' to address this issue in the leases with the landowners.
3. Article VII, Section D, Number 6, (Page 37): The requirement to develop a hunting plan, in collaboration with the state Departments of Fish and Wildlife (WDFW) and Natural Resources (DNR), in the event control of large game in the project area is necessary. The KVVWPP contains no other provision for a hunting plan. Furthermore, measures for game control are more appropriately addressed by Sagebrush Power Partners and the landowners. Again we recognize that EFSEC has no jurisdiction over activities on individual's private property and unlike the Wild Horse Wind Power Project there is little or no public lands managed by WDFW or DNR, therefore developing a hunting plan in collaboration with those entities does not seem appropriate.

Mr. Darrel Peebles  
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September 3, 2008

4. Article IV, Section F, Number 7, First Bullet (Page 26): The requirement to allow DNR staff access to the project area and that DNR staff will be issued keys. The key element of this provision is not relevant to this project because there is no DNR land.
5. Article IV, Section L, (Page 30): The requirement for submittal of the Noise and Shadow Flicker Modeling to EFSEC 30 days prior to beginning of site preparation. We recognize that submittal of this modeling is not practicable until after the final layout and micro-siting of turbines is completed, therefore for accurate modeling this requirement should only apply when the final layout and micro-siting is completed.
6. Article IV, Section G, (Page 27): The requirement that the applicant maintain 100-foot buffers around archaeological and historical sites within the project area. As some county roads pass within 100 feet of archaeological and historical sites within the project area, and the applicant does not control county roads, we recognize this SCA requirement can not be complied with in respect to the county roads only.

After careful review, and consultation with EFSEC Chair Luce and legal counsel, EFSEC staff agrees with your suggestion that these inconsistencies occurred because the Wild Horse Wind Power Project SCA was used as the model for the KVVWPP SCA and it appears that some of Wild Horse's requirements were inadvertently included and should not apply to the KVVWPP.

All agree that there is no need at this time for formal Council action. This is a clerical error situation, and the inconsistencies will be dealt with when there is a need for a formal amendment to the KVVWPP SCA.

EFSEC staff will distribute copies of this letter to the KVVWPP SCA holders to be physically attached to copies of the existing SCA

If you have any questions concerning this letter, please contact me at (360) 956-2152.

Sincerely,



Allen J. Fiksdal  
EFSEC Manager