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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2004-01:
WIND RIDGE POWER PARTNERS, LLC;
WILD HORSE WIND POWER PROJECT

**SETTLEMENT AGREEMENT
BETWEEN WASHINGTON STATE
DEPARTMENT OF FISH AND
WILDLIFE AND APPLICANT**

I. INTRODUCTION

A. Parties

Wind Ridge Power Partners LLC ("Applicant") is seeking a Site Certification Agreement (SCA) from the Energy Facility Site Evaluation Council (EFSEC) to construct and operate the proposed Wild Horse Wind Power Project ("Project").

Washington Department of Fish and Wildlife (WDFW) has a mandate to preserve, protect, manage, and perpetuate the state's fish and wildlife resources including habitat

B. Purpose And Intent

WDFW has reviewed the impact of the project and provided input regarding wildlife issues related to the Project. This stipulation resolves all issues WDFW may have regarding the project and any potential future participation in the contested case process WDFW notes that the Applicant (separate from this agreement) has already voluntarily committed to enter into a conservation easement regarding the project site, not as mitigation but as a voluntary act of good citizenship and stewardship of the land. This conservation easement shall be consistent with the uses of the land required by a wind power generation facility, and allow the land to be used for

1 wind energy development and associated activities and facilities, pursuant to the commitments
2 and conditions set forth in this stipulation, the EFSEC Application for Site Certification and the
3 EFSEC Site Certification. The conservation easement will allow grazing on the land, subject to
4 the terms and conditions contained in Exhibit A as set forth on page 3. The conservation
5 easement shall also allow public access and recreational uses as set out in the EFSEC Site
6 Certification Agreement and this Stipulation.

7
8 **C. Resolution Of Issues**

9 The Applicant has undertaken site impact assessments to identify the wildlife and wildlife
10 habitat impacts expected from construction and operation of the Project facility. The anticipated
11 impacts and proposed mitigation measures are consistent with the Wind Project Habitat
12 Mitigation Guidance Document (WDFW 2003a). WDFW has reviewed and commented on
13 these assessments and the Parties have agreed that the following commitments for mitigation
14 measures will resolve all WDFW's issues raised by its Regional Wildlife Biologist, Leray
15 Stream in testimony that it provided in this proceeding.

16
17 **II. APPLICANT'S COMMITMENTS**

18 Applicant agrees that the mitigation measures identified in this Settlement Agreement
19 shall be implemented if construction of the proposed electrical generation project proceeds
20 pursuant to an SCA. The parties agree that the Applicant will comply with any SCA
21 requirements that set stricter standards regarding protection of fish, wildlife or their habitat, than
22 those contained in this agreement. In addition the Applicant commits to conditions set out in
23 Exhibit A, attached hereto and incorporated by reference herein as if fully set out.

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25 **III. Withdrawal of Objections**

Based upon Applicant's commitments herein, and upon compliance with mitigation
measures proposed in the DEIS, WDFW agrees that Applicant's compliance with the terms of

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this Agreement will mitigate impacts to fish and wildlife resources, including habitat, to a level of non-significance. Therefore, based on this Agreement, WDFW stipulates that this Project is consistent with the *Wind Project Habitat Mitigation Guidance Document (WDFW 2003a)* and addresses and fully satisfies all WDFW's concerns raised in the testimony provided by WDFW through its Regional Wildlife Biologist in this proceeding. WDFW stipulates it is has no issues related to the project subject to this adjudicative hearing unless there is a substantial change in the proposed project.

DATED: February 18th, 2005.

By  _____
Attorney for Applicant

WASHINGTON ATTORNEY GENERAL

By  _____
Assistant Attorney General
Attorney for Washington Department of
Fish and Wildlife

Exhibit A



State of Washington

Department of Fish and Wildlife

1701 South 24th Avenue, Yakima, WA 98926

Phone: (509) 575-2740, Fax (509) 575-2474

February 8, 2005

Allen J. Fiksdal, Manager
Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, Washington 98504-3172

Subject: Wild Horse Wind Power Project – Supplemental information on the Draft Environmental Impact Statement (DEIS)

Mr. Fiksdal:

This letter is intended to provide supplemental information related to the DEIS for the Wild Horse Wind Power Project. Since our initial comments on the DEIS were submitted to you on September 10, 2004, Brent Renfrow and I have had several discussions regarding the DEIS with staff from Zilkha Renewal Energy (Zilkha).

These supplemental comments are submitted pursuant to our contract with EFSEC to provide technical expertise on the Wild Horse project. The views expressed in this letter shall not be deemed to represent the official position of WDFW. For purposes of this letter, "WDFW" means WDFW staff who are not acting in their capacity as contractors to EFSEC to provide technical expertise on the Wild Horse Wind Power Project.

Our understanding of the current Zilkha proposal is presented under the same outline as our original comments on the DEIS, wherever specific responses are available. The original headings and excerpts from our DEIS comment letter are provided first, followed by responses from Zilkha. Other, more general statements from Zilkha, related to fish and wildlife impacts are provided on Pages 6-8.

Shrub Steppe Plant Communities and Associated Wildlife – Impacts and Mitigation

- **Construction timing:** *Comment: Section 3.4.4 should include construction timing as a mitigation measure to avoid and minimize impacts to soils and vegetation. To the greatest extent possible, construction activities outside of the hardened footprint of the project (i.e. “temporary disturbance areas”) should be done during the late spring,*

summer and fall when soil moisture is very low.

Zilkha has agreed to avoid, to the greatest extent possible, construction activities outside permanently disturbed areas except for during the months of May through October when soil moisture is low. Trenching of underground electric collection cables may be performed outside this time window, as the soil cover in those areas will be disturbed regardless of the season and will need to be restored and reseeded.

- **Post-Construction Restoration of Temporary Disturbed Areas - Standards for site restoration:** *Comment: The DEIS should identify a reference standard (or a process to establish one) for evaluation of site restoration success.*

Zilkha will develop a restoration plan and conduct habitat reseeded programs when optimal germination and establishment conditions are present, as determined in consultation with the Technical Advisory Committee (TAC) and WDFW, and not necessarily immediately following the disruption. Zilkha will cover temporarily disturbed areas in accordance with erosion control measures set forth in the EIS at such time as site conditions are deemed favorable.

Zilkha agrees to work with WDFW and the TAC to evaluate the success of restoration efforts using an agreed-upon reference site in order to gain insights which might inform future restoration efforts at other projects. Zilkha shall ensure effective erosion and weed control and commits to a good-faith effort to restore habitat, but does not agree to additional mitigation measures beyond what has been proposed should restored habitat differ in quality from the reference standard.

- **Proposed Acquisition of Habitat Mitigation Site and Clarification of proposed mitigation ratios:** *Comment: The proposed habitat mitigation site is suitable, strategically located and should achieve the mitigation goals for which it is to be acquired. This site would address direct footprint impacts from roads, towers and construction.*

Zilkha has proposed to mitigate for all permanent and temporary impacts to habitat caused by the Project in accordance with the ratios outlined in the WDFW Wind Power Guidelines. The area designated for mitigation is estimated at approximately 600 acres and is located in Section 27, T18N, R21E in Kittitas County, WA. Since Zilkha has an option to purchase the property if the Project goes forward, Zilkha can provide legal protection and protection from degradation for the life of the Project. Improved management of habitat throughout the mitigation parcel offers an opportunity for long-term protection of habitat for many shrub steppe species.

Zilkha has agreed to fence this parcel to exclude livestock grazing, if grazing practices continue on adjacent properties at the time the project goes into operation.

Use of Section 27 as a mitigation parcel would result in protection of an approximately 1-mile segment of Whiskey Dick Creek near its headwaters. Protection of waterways and their adjacent riparian habitat provide additional benefits beyond replacement of in-kind habitat at agreed upon ratios. Protection of this segment of Whiskey Dick Creek provides benefits for water quality, wildlife, and species diversity. In addition, Section 27 is adjacent to state-owned lands. Washington Department of Natural Resources (WDNR) administers Section 34 to the south and WDFW administers Section 26 to the east. Use of Section 27 for mitigation will provide continuity of habitat with these adjacent state-owned sections. Finally, a variety of habitat types that occur in the general project area are found in Section 27, so a diversity of habitat types would be preserved. These include shrub-steppe (moderate and dense), herbaceous, herbaceous/rock outcrop, and woody riparian.

- **Domestic Stock Grazing:** *Comment: If grazing is to be continued on project lands, we recommend specific management of this activity, to minimize or eliminate associated impacts. Such management would include fencing of sensitive areas, rest rotations, limited numbers and timing of stock, and other techniques. Domestic sheep pose a significant risk to the re-established bighorn sheep herd in the area, and we recommend that they not be allowed on the project area if grazing is to occur.*

Zilkha has committed to developing and implementing a post-construction Rangeland Management and Grazing Plan, in coordination with the TAC, for the entire project area, which is intended to improve residual grass cover and potential nesting, brood-rearing and habitat for sage grouse, other shrub-steppe nesting species, and big game on the project. The Plan shall include provisions for the restoration of shrub steppe lands, native seeding prescriptions and management of livestock grazing on shrub steppe rangelands. The implementation of a Rangeland Management Plan will improve the quality of overall habitat throughout the project area.

Livestock grazing near the springs within the project area will be eliminated. If fences are needed to protect these springs, they will be constructed using fence designs conducive to passage by wildlife, as outlined below.

Big Game: *Comment: The WHWPP area is correctly identified in the DEIS as winter habitat for deer and elk. We would like to continue working with the project proponent for the use of hunting and other means on the site to achieve big game management objectives.*

Zilkha will prepare a hunting plan for the project area in consultation with WDFW and the TAC. At a minimum, said plan will include the following:

To promote the safety of big game animals, Zilkha agrees that any permanent fencing located within the Project site boundary will not exceed 42 inches in height to prevent the top wire from being broken when big game animals jump over the fence. The top wire will be at least 10 inches above the next wire. The bottom wire will be at least 16 inches above the ground to allow fawns and small animals to crawl under the fence.

Posted and enforced driving speed limits of 25 miles per hour within the Project area will minimize potential collisions with wildlife during both construction and operation. Vehicle trips on the Project roads will be minimal during operations. During Project operations, it is expected that turbines will require scheduled maintenance to be performed for approximately 2 to 3 days on each unit approximately every 6 months. There will be a team of 2 technicians, traveling from turbine to turbine in a service vehicle, to perform the scheduled maintenance and repairs. The main site access road will be driven daily (Monday through Friday). Other turbine string roads with few turbines may not be driven for over a week.

Wildlife - Direct Impacts and Mitigation

Meteorological Towers – Guyed Towers versus Free Standing *Comment: The projects five meteorological towers should be free-standing towers, which are demonstrably less likely to result in bird mortality than guyed towers.*

Zilkha has agreed to use free standing towers on permanent met towers.

Sage Grouse – New Information Available and Expanded Discussion Needed in DEIS: *Comment: New information relevant to sage grouse occurrence within the project and potential impacts of wind power facilities on sage grouse has become available since the Application for Site Certification was submitted and the scoping of the EIS. The discussion in the DEIS should be expanded to include this information. We noted that sage grouse have been observed in recent years in and around the WHWPP project site, including sightings of hens with broods (Lee Stream, WDFW data). Although no active leks were located during surveys for this project, the presence of broods indicates reproductive populations occur in the area.*

Zilkha has agreed that during the Sage Grouse lekking season, no routine maintenance of the substation area or facilities within ¼ mile of an active lek will be conducted between the hours of sunset and 9:00 am, and recreational use will be restricted to the extent feasible.

Zilkha further agreed that strategic planning for the location of rock sources and the operation of the concrete batch plant will consider the historic presence of grouse at the project site. The temporary nature of these impacts will reduce the likelihood of long term conflicts with any breeding, nesting and rearing of broods by grouse species that may occur on the site.

Zilkha notes it has made significant efforts to avoid areas considered to be sensitive habitat for sage grouse or otherwise sensitive for wildlife. Several turbines were initially proposed in the northwest portion of the project area along the existing north-south road. The collisions risks associated with these turbines are likely similar to most of the turbines within the project area. However, they are located in areas that have had historic sage grouse use. This entire string was dropped, increasing the lands within the project area that are absent of wind turbines and creating additional potential movement corridors for grouse and other wildlife. Avoidance of placing wind turbines in this prominent saddle may also reduce the overall potential risk of raptor mortality for the Project.

- **Micro-siting of Turbines to Reduce Turbine Mortality:** *Comment: Mitigation for direct mortality from turbines should include close attention to micro-site locations of towers. Towers should not be placed in locations of raptor concentrations, such as along steep ridgelines or at the top of cliff faces.*

The latest turbine layout avoids prominent saddles and potential crossing routes along the ridge associated with Whiskey Dick Mountain. Turbines were not sited within the saddles along Whiskey Mountain to avoid potential areas birds use to cross the ridge.

Turbines are not located adjacent to the springs, which were identified during habitat mapping. Turbine locations are at least 150 m from the nearest identified springs (Wild Horse, Skookumchuck Heights, Dorse, Reynolds, Thorn, Government, Pine, Seabrock, unnamed) and in most cases, are more than 300 m from the springs. These water sources may be important for bird and big game species, but have historically been impacted and degraded by livestock use. Mitigation for the proposed project includes the exclusion of livestock from the springs, which should greatly increase the habitat quality of these areas. Fencing will be designed so big game and other wildlife will still be able to access water sources.

Turbines are located on the ridges away from the riparian areas of the drainages that likely contain a higher diversity of bird species. Turbines are located at least 140 m from the Pines located in the central portion of the project area. Higher mortality of songbirds and other species associated with these riparian corridors and near these trees might be expected if turbines were sited closer to these features.

Recreation – Impacts and Mitigation

- **Public Access to Public and Private Lands:** *Comment: The DEIS discussion on impacts of the project on recreation is conflicting. Hunting specifically would be the subject of a management plan developed by WDFW and the Applicant. But elsewhere the document notes that the project area would be closed to the public during construction and section*

3.12.2.2 (Parks and Other Recreational Facilities) notes that access to the project site will be controlled.

In order to minimize potential conflicts and risks to both workers and hunters, no hunting will be allowed on the property during construction (estimated to last less than one year.)

After construction is complete, controlled hunting will be allowed. Possible measures to control hunting may include access control, limiting hunting to those individuals who have completed the Advanced Hunter Education program, and/or hunting by access permit.

Zilkha will take measures to inform the hunting public of the change in hunting practices on the site. Measures may include a combination of advertisement in WDFW hunting regulations and publications, signage, and outreach through sporting organizations.

In addition to the specific responses above, the following information was provided by Zilkha to address various monitoring, compliance, construction and operational practices related to environmental issues.

Post-Construction Monitoring:

1. Zilkha commits to the formation of a TAC to coordinate appropriate mitigation measures, monitor impacts on wildlife and habitat, and address issues that arise regarding wildlife impacts during construction and operation of the wind power project. A post-construction monitoring plan will be developed in coordination with the TAC and approved by EFSEC. The TAC will evaluate the mitigation and monitoring program and determine the need for further studies and mitigation measures in accordance with the WDFW Wind Power Guidelines.
2. Zilkha has proposed two years of monitoring studies to evaluate impacts to avian species, with incidental monitoring during the life of the project. This study will include at a minimum, standardized casualty searches on a 28-day interval throughout the year combined with searcher efficiency trials and carcass removal trials to estimate the direct impacts to avian species from the project. The post-construction monitoring plan for the project will follow a detailed written protocol which will document the monitoring measures being conducted. The TAC shall reconvene if unanticipated circumstances arise during incidental monitoring.
3. Zilkha agrees that a wildlife casualty reporting and handling system be implemented by wind project personnel (O&M staff) for the life of the project following a detailed written protocol developed for the project and similar to other wind projects in the region.
4. TAC members shall be approved by EFSEC. Members proposed by Zilkha include representatives from WDFW, USFWS, Kittitas County government, project landowners, the applicant and the

community. The community representative will not be anyone party to a turbine lease agreement, or any other contractual obligation with Zilkha, and shall be a person mutually agreeable to the other participants on the TAC.

Environmental Compliance during Construction:

1. An Environmental Compliance program by Zilkha will ensure that construction activities meet the conditions, limits and specifications set in environmental standards established in this agreement, the Site Certification Agreement, and all other environmental regulations.
2. Copies of all applicable construction permits will be kept on-site. The lead Project construction personnel and construction Project Managers will be required to read, follow and be responsible for all required compliance activities. A Project Environmental Monitor will be responsible for ensuring that all construction permit requirements are adhered to, and that any deficiencies are promptly corrected.
3. The Environmental Monitor will ultimately report to the Project Manager and will provide weekly reports on environmental problems reported or discovered as well as corrective actions taken to resolve these problems. The Environmental Compliance Program will cover avoidance of sensitive areas during construction, waste handling and storage, stormwater management, spill prevention and control and other components required by state and county regulation. Upon identification of an environmental noncompliance issue, the Environmental Monitor will work with the responsible subcontractor or direct hire workers to correct the violation; if not corrected in a reasonable period of time a “stop work” order can be issued for that portion of the work not in compliance with the Project environmental requirements.
4. Unique Plant Species - The only unique plant species that may be impacted by the project is the hedgehog cactus, a Washington State Review List species. Access to the site will be controlled during both construction and operations, which should provide greater protection than is currently afforded to this species. As collection of this species for gardens has been cited as a reason for its decline, if such collection becomes a problem at the Project site, Zilkha will post a sign at the visitors’ kiosk indicating that collection of any plants in the Project area is prohibited.
5. Wetlands, Streams and Riparian Areas - There are a few Class 3 wetlands in the form of seeps and springs within the Project area, however, all Project facilities will be located a considerable distance from them to prevent any impacts to these wetlands. Roads, underground cables, turbine foundations, transmission poles and other associated infrastructure will not be located within any riparian areas or streams and will not involve the use of any heavy equipment in stream beds or riparian areas. BMPs will be implemented to retain sediment from disturbed areas and minimize areas of disturbance.
6. Construction - Zilkha proposes the use of construction techniques and Best Management Practices (BMPs) to minimize potential impacts to habitat and wildlife. These include the following:

- Use of BMPs to minimize construction-related surface water runoff and soil erosion
- Use of certified “weed free” straw bales during construction to avoid introduction of noxious or invasive weeds;
- Flagging of any sensitive habitat areas (e.g. springs, raptor nests, wetlands, etc.) near proposed areas of construction activity and designation of such areas as “off limits” to all construction personnel;
- Proper storage and management of all wastes generated during construction;
- Require construction personnel to avoid driving over or otherwise disturbing areas outside the designated construction areas.

7. Operations - During Project operations, appropriate operational BMPs will be implemented to minimize impacts to plants and animals. These include the following:

- Implementation of a fire control plan, in coordination with local fire districts, to avoid accidental wildfires and respond effectively to any fire that might occur;
- Zilkha has entered into an agreement with Kittitas County Rural Fire District #2 to provide fire protection services during the construction and operation of the Project;
- Operational BMPs to minimize storm water runoff and soil erosion;
- Implementation of an effective noxious weed control program, in coordination with the Kittitas County Noxious Weed Control Board, to control the spread and prevent the introduction of noxious weeds;
- Identification and removal of all carcasses of livestock, big game, etc. from within the Project that may attract foraging raptors;

Thank you for the opportunity to provide additional comments related to the DEIS. If you have questions or need additional information, please contact me (509-457-9314) or Brent Renfrow (509-925-1013).

Sincerely,



Ted A. Clausing
Regional Habitat Program Manager

cc: Chris Taylor, Zilkha
Lauri Vigue, WDFW
Brent Renfrow, WDFW
Sonia Wolfman, AAG