

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of:) Pre-Hearing Conference
Application No. 2004-01) Pages 1 thru 5
WIND RIDGE POWER PARTNERS, L.L.C.,) Volume I
)
WILD HORSE WIND POWER PROJECT)
_____)

A prehearing conference was convened in the above matter and was held in the presence of a certified court reporter on March 7, 2005 at 9:00 a.m., at 512 North Poplar Street, Kittitas County Fairgrounds, Fine Arts Building, Ellensburg, Washington before Energy Facility Site Evaluation Councilmembers.

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JUDGE TOREM: Good morning. My name is Adam Torem, spelled T-O-R-E-M. I'm the Administrative Law Judge for Energy Facility Site Evaluation Council. Today is Monday, March 7, 2005, shortly after nine o'clock in the morning.

I am now calling to order a prehearing conference to put a few things on the record and explain our proceeding for today. We will close this pre-hearing conference very shortly and take up the land use hearing and reconvene that matter and then after the land use hearing this morning we will have another prehearing conference to entertain

<p style="text-align: right;">Page 2</p> <p>1 approval of perhaps of some settlements that are coming to 2 our attention.</p> <p>3 Let's have councilmembers identify themselves and 4 take a roll. We'll start with the Chair.</p> <p>5 MR. LUCE: The Chair is present. My name is Jim 6 Luce.</p> <p>7 JUDGE TOREM: We have Community Trade and Economic 8 Development represented by Richard Fryhling, from Kittitas 9 County Patti Johnson, we also have Chris Towne from Fish and 10 Wildlife, Utilities and Transportation Commission Tim 11 Sweeney, Hedia Adelsman for the Department of Ecology, and 12 Department of Natural Resources is being represented today 13 by telephone Tony Ifie.</p> <p>14 Tony, are you there?</p> <p>15 MR. IFIE: I'm here.</p> <p>16 JUDGE TOREM: Ann Essko is the Assistant Attorney 17 General for the council and Allen Fiksdal and Irina Makarow 18 are here as staff.</p> <p>19 The parties that are present are for the county 20 James Hurson, Kittitas County Prosecutor, and Darryl Piercy 21 from the Planning Department.</p> <p>22 John Lane is here for the Counsel for the 23 Environment.</p> <p>24 Darrel Peeples and Chris Taylor and Andrew Young 25 are all here along with Jim McMahon and Erin Anderson for</p>	<p style="text-align: right;">Page 4</p> <p>1 expects to be entered into between the applicant and 2 Kittitas County and accepted by the council in the course of 3 today's proceedings Mr. Lathrop is choosing to not to 4 participate any further in the matter.</p> <p>5 Mr. Slothower, do you have any other comments on 6 that?</p> <p>7 MR. SLOTHOWER: NO. Mr. Lathrop may appear at the 8 public participation tomorrow night.</p> <p>9 JUDGE TOREM: Excellent. But not as a party of 10 the proceedings?</p> <p>11 MR. SLOTHOWER: No.</p> <p>12 JUDGE TOREM: Council, are there any other 13 procedural issues that we should note as part of this 14 prehearing conference?</p> <p>15 Seeing none from the council.</p> <p>16 Mr. Peeples, do you have anything else prior to 17 opening the land use hearing?</p> <p>18 MR. PEEPLES: Nothing further.</p> <p>19 JUDGE TOREM: This prehearing conference is closed 20 and we will pause to allow our court reporter to switch 21 files and we will reopen the land use hearing when he's 22 ready.</p> <p>23 * * * * *</p> <p>24 (Whereupon, the prehearing conference 25 recessed at 9:12 a.m. and reconvened at 11:43</p>
<p style="text-align: right;">Page 3</p> <p>1 the applicant.</p> <p>2 The purpose for this prehearing conference this 3 morning is to acknowledge on the record the withdrawal of 4 two intervenors and Debbie Stanton is up here from the 5 Economic Development Group for Kittitas County. Thank you 6 both.</p> <p>7 Friends of Wildlife and Wind Power, on Friday 8 afternoon March 4th, gave notice of withdrawal of 9 intervention and request for ongoing notice of proceedings 10 and David Bricklin, their attorney, signed this on their 11 behalf and filed it with the council and all of the parties 12 should have gotten a copy.</p> <p>13 So what that means is that Mr. Kruse and Mr. 14 Stream's testimony will not be offered in the adjudicative 15 hearing and Friends of Wildlife will not be doing cross 16 examination of witnesses as they may have earlier indicated.</p> <p>17 The council also received on Saturday March 5th 18 from intervenor F. Steven Lathrop a notice of non 19 participation and request for ongoing notice.</p> <p>20 Jeff Slothower, Mr. Lathrop's attorney, is here 21 today, but we're going to accept -- he's indicating that 22 he's reserving further comment on this, his notice of non 23 participation, and he'll be here to watch the proceedings 24 this morning because the conditions of this notice of non 25 participation indicate that based on a stipulation he</p>	<p style="text-align: right;">Page 5</p> <p>1 a.m.)</p> <p>2 JUDGE TOREM: Back on the record. All right, we 3 will call the prehearing conference on the matter of Wild 4 Horse Wind Power Project back into session here at 11:43 5 a.m. on March 7, 2005.</p> <p>6 The entire council is present with councilmember 7 Ifie by telephone and we're now taking up the matter of 8 settlement agreement between the Washington State Department 9 of Fish and Wildlife and the applicant.</p> <p>10 This is a three-page document and it has attached 11 to it Exhibit A, which is a letter dated February 8, 2005 12 from Ted Clausing, C-L-A-U-S-I-N-G, who is the regional 13 habitat program manager.</p> <p>14 There are some questions as to which version of 15 the letter is a correct version. I want to make it clear 16 that the council has the latest and greatest version of Mr. 17 Clausing's letter, a one-page version of the attached which 18 are substantively quite similar and almost identical to Mr. 19 People's original fax of the settlement agreement on March 20 4th that copy which has Darrel Peeples's fax imprint at the 21 top is not the correct version.</p> <p>22 The council will be using a different version. I 23 know he is just -- Mr. Peeples's you can talk about this 24 matter of what the council has been handed and they already 25 have in front of them; is that correct, sir?</p>

1 MR. PEEPLES: Yes. I think the answer to that is,
2 I don't know, I think -- we put this together over at Mary
3 Sue Wilson's office and I don't know quite frankly where
4 that document came from, but the stipulation has the copy
5 attached to it, that is attached to it.

6 The stipulation purpose is for the conditions. My
7 understanding is that the only difference in these two
8 letters is that in the second one said there was a statement
9 that Clausing was representing EFSEC not WDFW to make that
10 more explicit.

11 So I think, with that understanding, I think the
12 only reason the copy of the original letter was attached was
13 so we didn't have set out all of the conditions.

14 JUDGE TOREM: All right, very good, just wanted to
15 clarify that issue. It's been a paper shuffle for us. I
16 think we now have the correct one with the conditions.

17 All right, Mr. Peeples, how do you want to proceed
18 with the presentation of this agreement?

19 MR. PEEPLES: I would like to -- is it on -- is it
20 on now?

21 We have Jeff Tayer, the Regional Director of the
22 Department of Fish and Wildlife, here.

23 I have Chris Taylor and they would be the
24 responding witnesses for this document. So I think that the
25 document pretty much speaks for itself. We would ask that

1 it be entered.

2 We have Mary Sue Wilson, the Assistant Attorney
3 General, I guess, Senior Assistant Attorney General, right,
4 for the Department of Fish and Wildlife is not here. If we
5 need her she's available by telephone. I don't see any real
6 issue here, you know.

7 I don't think that Counsel for the Environment has
8 an issue with this, do you?

9 MR. LANE: No.

10 MR. PEEPLES: You know, essentially, we're just
11 presenting this document. And if the council has any
12 questions about the stipulation, you can either direct them
13 to Chris or to Jeff.

14 JUDGE TOREM: Let me ask one basic question
15 because there's all of these settlement agreements.

16 This particular document, Mr. Taylor, says on Page
17 2, under Roman Numeral II, the parties agree that the
18 applicant will comply with any of the site certification
19 agreements, requirements, that set stricter standards for
20 protection of fish and wildlife habitat if they are stricter
21 than those contained in the agreement.

22 So is there an understanding then that this is a
23 floor and EFSEC can be stricter as to rest of the hearing
24 may show and any decision made by councilmembers to any sort
25 of stricter requirements?

1 MR. TAYLOR: Chris Taylor representing the
2 applicant. Yes, I think that's correct, that's the process
3 and we recognize that.

4 JUDGE TOREM: Mr. Taylor, if you want to go
5 through any of the particular mitigation measures that are
6 in this letter, highlighting any of them for the council.

7 The council has read this letter obviously on the
8 date it came out, February 8th, and as you can see the date
9 of agreement is February 18th and adopt these letters.

10 Are there any of particular note that you want to
11 go through or give Mr. Tayer a chance to discuss for the
12 council or do you want to respond to specific questions?

13 MR. TAYLOR: Unless there's specific questions
14 from the council, I am prepared to address any of those, but
15 the only thing I would highlight that is noted in the
16 stipulation document that is not, I believe, noted within
17 the attached letter is the issue of conservation issue.

18 And I think that's the only real new piece of
19 information that's presented in the stipulation that wasn't
20 also already present in the letter from -- I believe he
21 pronounces it Clausing, actually I think -- on February 8th,
22 and the conservation commitment again is I've noted in the
23 stipulation is outside the scope of strict SEPA mitigation,
24 but it's a voluntary act by the applicant and also PSE also
25 committed to abide by that.

1 That would in effect guarantee that or in
2 perpetuity be a commitment that if this project ceases
3 operating that it doesn't turn into something else other
4 than a wind farm or open space.

5 MS. TOWNE: Question. The stipulation on Page 2,
6 Paragraph 1, references Exhibit A as set forth on Page 3 as
7 the conservation easement. I don't have an Exhibit A.

8 MR. TAYLOR: Well, Exhibit A is the letter from
9 Ted Clausing and the Page 3, I believe, was referring to
10 Page 3 of letter addressed Allen Fiksdal from Ted Clausing.
11 The first bullet on that page, in the middle of the page, I
12 think that's the reference that is being made there.

13 In other words, the conservation easement
14 specifically carves out three types of activities that would
15 be permitted. One is renewable energy use pursuant to this
16 SCA and as well as the county's development agreement as
17 well as public access for recreational purposes and as well
18 as grazing subject to the provisions that are on that page,
19 I would refer you to Page 3.

20 In other words, we want some format that just says
21 that a grazing and range land management plan will be
22 developed in consultation with TAC and that will be the
23 guide for any grazing that takes place on the property.

24 JUDGE TOREM: Mr. Taylor, as to the conservation
25 agreement, that -- it's noted on Page 1 of this settlement

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1 agreement is separate, where will the councilmembers find
 2 the terms of that agreement?
 3 MR. TAYLOR: They do not currently exist. As has
 4 been put in the record, we are not currently in possession
 5 of said property.
 6 It will be -- the conservation issue will have to
 7 be exercised once the first property is purchased and the
 8 exact terms and final form of that conservation easement are
 9 not develop yet developed.
 10 JUDGE TOREM: So this is in concept only at this
 11 time and a voluntary commitment, Mr. Peeples?
 12 MR. PEEPLES: That's true, but if you take a look
 13 at it what it defines is it's going to be the general
 14 conservation easement, non development easement, and only
 15 thing that the property can be put to is for wind farm
 16 purposes and for grazing purposes as, you know, as defined
 17 in the letter from Clausing and so that, you know,
 18 essentially -- and for the recreational purposes and to be
 19 consistent with the SCA.
 20 Other than that, it is a conservation easement,
 21 it's non development non-use easement, so that wouldn't be
 22 developed, you know -- you know, later, but the basic terms
 23 are defined there I think for the council's purposes, you
 24 know, the only uses that can be made are -- well, you know,
 25 what they are because they are listed.

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1 JUDGE TOREM: Again the conservation easement if I
 2 understand correctly is not something that other than what
 3 you're going to put in a draft SCA would be required by the
 4 council, this an above and beyond issue that the
 5 applicant is taking on and won't have to factor into the
 6 council's decision making other than to recognize a
 7 voluntary commitment is being made?
 8 MR. PEEPLES: Correct.
 9 MR. TAYLOR: Correct.
 10 JUDGE TOREM: Councilmembers?
 11 MS. ADELSMAN: Clarification, so the easement is
 12 outside of the properties; is that right?
 13 MR. TAYLOR: The conservation easement would apply
 14 to those properties, properties being held and managed
 15 within the project, that wouldn't be purchased in order to
 16 build the project.
 17 As the council, I believe, understands that there
 18 is both public and private land within the project boundary.
 19 Obviously, it's a private entity and we are proposing to
 20 impose conservation easement on public entities.
 21 However, on the private land that will be
 22 purchased as part of the construction effort of the project
 23 as a voluntary effort and what we think is the right thing
 24 to do is to put that in the conservation easement to be sure
 25 that doesn't get developed into something else in some

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1 distant future.
 2 JUDGE TOREM: Mr. Taylor, do you have a proposed
 3 schedule for the acquisition of these lands?
 4 MR. TAYLOR: Well, it would to be done prior to
 5 moving forward with construction and I think from a
 6 commercial perspective after final decision and the
 7 expiration of the appeal period.
 8 JUDGE TOREM: Do you contemplate that EFSEC should
 9 put in deadlines even -- not hard dates because we don't
 10 know how long this process might take and if there is an
 11 appeal how long that might extend the process if you
 12 anticipate that EFSEC should in the SCA give a requirement
 13 to own the lands prior to the construction beginning so that
 14 these other commitments you're making for the conservation
 15 easement go into effect prior to construction?
 16 MR. PEEPLES: I think it's an important point from
 17 the applicant's perspective, you asked for our perspective,
 18 so I will share our perspective with this council.
 19 This conservation easement goes way above and
 20 beyond anything that is required under any relevant state or
 21 federal law, guidelines or policy, we would like to be
 22 recognized for having done something we think is an act of
 23 true conservation leadership by including that in the SCA,
 24 if that's a permit requirement or not, and we have every
 25 intention of following through on doing it, but it does tend

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1 to get construed as a mitigation requirement if it's
 2 included in the regulatory order.
 3 JUDGE TOREM: All I am asking is not so much as
 4 addressing the conservation easement as a requirement
 5 acknowledging it perhaps but a deadline for the acquisition
 6 of the land.
 7 Is there any reason that we could approve the SCA
 8 with leases in place with the rest of the project; is that
 9 correct?
 10 MR. TAYLOR: We kind of structured it on agreement
 11 with the land owners requires us to purchase the land so
 12 that it fits within the project. We don't have an option to
 13 lease it but to purchase.
 14 JUDGE TOREM: So if we approve the project the
 15 actual approval is essentially contingent on closing all of
 16 those transactions with the land owners?
 17 MR. TAYLOR: That's correct.
 18 JUDGE TOREM: I think that addresses both what the
 19 question was and then your voluntary position on that newly
 20 acquired land in the conservation agreement would be your
 21 actions and not something required by county or by EFSEC?
 22 MR. TAYLOR: Correct. We just wanted to simply
 23 make the council aware of that and that it's an important
 24 issue for the department as well.
 25 JUDGE TOREM: Councilmembers, any additional

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1 questions on the Clousing letter or on the settlement
2 agreement itself.

3 MS. ADELSMAN: Just a quick question on TAC, the
4 technical advisory committee. Is my understanding that
5 EFSEC would establish the membership and that it would be
6 part of the SCA?

7 MR. PEEPLES: That's correct.

8 JUDGE TOREM: Okay. Just for Mr. Ifie on the
9 phone, the question was with respect to the technical
10 advisory committee, or TAC, if Mr. Peeples is agreeing that
11 EFSEC does have the ability to finally decide the
12 composition of that body.

13 MR. PEEPLES: And that body -- the TAC would send
14 reports to the council. The council has control of the TAC.

15 MS. ADELSMAN: So it's my understanding that it's
16 like a permanent advisory committee.

17 MR. TAYLOR: For the record, Chris Taylor for the
18 applicant. I will propose a brief background on our
19 position on TAC. The technical advisory committee is a
20 precedent that's been set by the other operating wind farms
21 in both Oregon and Washington.

22 To my knowledge, all of those projects have had or
23 currently do have a technical advisory committees. The
24 length and intensity of that body, its duration and
25 intensity, is driven by the length of the project. It's our

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1 intent to not proscribe ahead of time how long that body
2 needs to exist. We would propose in our draft SCA to allow
3 it to go as necessary but not to insist that it last for 20
4 years if the work is done in three or not to shut it down
5 after three if in fact the work is not done. That would be
6 our intent.

7 And, again, as Mr. Peeples indicated the intent is
8 that EFSEC retains final decision making authority. There
9 is a reference to the composition of TAC both in the
10 application that we submitted in the DEIS and on Page 8 of
11 the county's development agreement under Section 2.17,
12 essentially with the Department of Fish and Wildlife,
13 council representation, county representation.

14 Historically, in other TACs, there's the US Fish
15 and Wildlife and they have been invited to participate, they
16 have not been very active in the process, so I don't know if
17 they would want to or not. Local interest groups, public
18 and the applicant.

19 But the intent is to have as much as possible
20 assigns given effort to review results of monitoring studies
21 and making appropriate recommendations to EFSEC. If you're
22 going to have to do a study and the post construction
23 monitoring studies that will be conducted pursuant to what
24 we committed to and someone is going to have make sense of
25 that and make their recommendation about what was does this

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1 mean and that's the intent is to have a body to do that.

2 JUDGE TOREM: Councilmembers, any other questions?

3 MS. TOWNE: I have a question about certain
4 provisions of the Clousing letter and where those pieces are
5 now lodged in, if at all, for instance on Page 4 under sage
6 grouse, says the discussion DEIS should be extended to
7 include this information. Has that been done? Do you have
8 some assurance that will be done?

9 MR. PEEPLES: I will be testifying to that and I
10 think that information will be added to the FEIS.

11 MS. TOWNE: And on the next page, Page 5, the
12 reorientation of the stream creating additional fishing
13 proposed is the new project still going to incorporate that
14 modification?

15 MR. TAYLOR: That is located in the county
16 documentation.

17 JUDGE TOREM: I think that is Exhibit A; is that
18 correct? Exhibit A of the --

19 MR. TAYLOR: This is an issue of potential
20 confusion that I would like to comment on right now. For
21 the purposes of consistency, we have maintained the same
22 project site layout in all of the exhibits in both the
23 county and EFSEC process to hopefully -- in the interest of
24 avoiding confusion, I think it may have created confusion.
25 In attempting to avoid confusion now, which is

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1 that those revisions throughout both documents speaks of
2 submittal of the final plan, the final engineering before we
3 go to construction and rather than keeping -- modifying this
4 incrementally along the way propose to stay with the
5 proceedings layout and not create new intermediate documents
6 but we will present the final layout.

7 We will have the changes that are referenced in
8 here plus any others necessary based on any further
9 decisions that the council makes or other any things that
10 are discovered on site. Those would be presented to EFSEC
11 and to the county prior to construction.

12 So, no, the exhibits that are in the county's look
13 just like exhibits in our application to EFSEC and do not
14 reflect the changes that are described in here.

15 MS. TOWNE: Just for the record, then in the next
16 section down on the parking lot, I assume you will deal with
17 that in a similar fashion.

18 MR. TAYLOR: Correct. That refers to -- that's
19 what I would refer to intermediate or interim layout that
20 we've been working on that we've shared with DFW to make
21 sure that we're all on the same page about where their
22 concerns lie.

23 I don't think we object to making that document
24 public. We just for simplicity sake want to wait until they
25 are ready to go through the final layout and construction

<p style="text-align: right;">Page 18</p> <p>1 and present that to EFSEC for approval.</p> <p>2 MR. PEEPLES: The other thing is, you know, the</p> <p>3 final won't be done until you pick the turbines and then,</p> <p>4 you know, when you pick the turbines, you know, we've asked</p> <p>5 for a range of scenarios and there maybe something in</p> <p>6 between, you know, different size rotors, maybe different</p> <p>7 size towers.</p> <p>8 But what we have done is kind of like the maximum</p> <p>9 of towers, maximum of wind swept areas by the rotors, you</p> <p>10 know, those are the impact items and within that, you</p> <p>11 know -- you know, there will be maybe fewer and more --</p> <p>12 maybe you analyze with a geotech on where you want to put</p> <p>13 them and then you might decide about things and decide that</p> <p>14 you don't put them in the saddles and things of that nature.</p> <p>15 MS. TOWNE: On Page 6 under post construction,</p> <p>16 Item No. 3, it says, following a detailed written protocol</p> <p>17 on the development of the project, casualty reporting, who</p> <p>18 develops the written protocol and where would I find it?</p> <p>19 MR. TAYLOR: We could provide you -- Chris Taylor</p> <p>20 from the applicant. Mr. Ericson will be testifying, I</p> <p>21 believe tomorrow, consultant for the applicant. I have seen</p> <p>22 such plans from Mr. Ericson. He can probably provide a</p> <p>23 sample and he's also involved in what's being proposed for</p> <p>24 other projects that are in permitting right now.</p> <p>25 We don't have a draft plan that we have submitted</p>	<p style="text-align: right;">Page 20</p> <p>1 know, those things will be reviewed by the county and</p> <p>2 submitted by county and the applicant. That's just one of</p> <p>3 the very many plans that Mike Mills will be working on at</p> <p>4 that time.</p> <p>5 JUDGE TOREM: Mr. Peeples, would it be a fair</p> <p>6 request to ask that with the site certification agreement</p> <p>7 draft that you maybe submitting after hearings that we get a</p> <p>8 schedule of those plans as to when they might -- a range of</p> <p>9 dates if not an exact date and so we have a list as to</p> <p>10 everything we might expect and thus nothing thus falls</p> <p>11 through the cracks?</p> <p>12 MR. PEEPLES: Yes. The site certification</p> <p>13 agreement standard has it that plans shall submitted by, you</p> <p>14 know, so many days before construction.</p> <p>15 JUDGE TOREM: That would be very helpful.</p> <p>16 MR. PEEPLES: Right and you will have those plans.</p> <p>17 JUDGE TOREM: Any additional questions about the</p> <p>18 proposed agreement or the letter?</p> <p>19 All right. So we will mark the Fish and Wildlife</p> <p>20 settlement, that's three pages, as Exhibit 9.</p> <p>21 And the supporting letter from Ted Clausing, at</p> <p>22 eight pages, mark that as Exhibit 10.</p> <p>23 Councilmembers, is there any objection or other</p> <p>24 parties present any objection to admit Exhibits 9 and 10</p> <p>25 into the record?</p>
<p style="text-align: right;">Page 19</p> <p>1 to anyone, but in reference it's similar to what the</p> <p>2 department hopefully is familiar with at other wind plants</p> <p>3 in the region, but if you would want to specifically to see</p> <p>4 a sample, you know, I see no reason --</p> <p>5 MS. TOWNE: I just want to know where it is going</p> <p>6 to be when it's time to draft the SCA.</p> <p>7 MR. TAYLOR: I think just like many of the other</p> <p>8 plans that we are proposed to draft the application in the</p> <p>9 SCA, we would have to provide it to EFSEC before we proceed.</p> <p>10 MS. TOWNE: There is another one on the top of</p> <p>11 Page 7, environmental compliance program pursuant to</p> <p>12 standards established in agreements, which I presume is the</p> <p>13 DFW and applicant agreement. Who is going to develop that</p> <p>14 and when are we going to see it?</p> <p>15 MR. TAYLOR: Chris Taylor on behalf of applicant.</p> <p>16 Councilman Towne, I believe the intent is for us to prepare</p> <p>17 all of those things between -- our proposal would be between</p> <p>18 the time of hopefully approval by EFSEC and the governor and</p> <p>19 prior to construction of all of these various plans that are</p> <p>20 required, what we proposed to be required pursuant to the</p> <p>21 SCA, be prepared by us and presented to EFSEC for review and</p> <p>22 approval prior to construction.</p> <p>23 MR. PEEPLES: I would like to clarify that the</p> <p>24 plan will be provided, the application plan will be provided</p> <p>25 and, you know, the final design plan will be provided, you</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. TOWNE: Mr. Torem, earlier I thought you said</p> <p>2 the letter from Clausing was Exhibit 8 to the Fish and</p> <p>3 Wildlife settlement agreement.</p> <p>4 JUDGE TOREM: I have that as a separate exhibit.</p> <p>5 With reference to Exhibit A, we will mark that as a separate</p> <p>6 exhibit to eliminate any confusion as to what was attached</p> <p>7 and what wasn't attached.</p> <p>8 MS. ADELSMAN: Did you say 9 and 10?</p> <p>9 JUDGE TOREM: 9 and 10. Seeing no objection,</p> <p>10 those are now admitted. Counsel for the Environment, any</p> <p>11 comment on this proposed settlement agreement?</p> <p>12 MR. LANE: Other than to say that the settlement</p> <p>13 agreement between Fish and Wildlife and the applicant and</p> <p>14 Counsel for the Environment certainly reserves the right to</p> <p>15 make recommendations that would exceed comments within the</p> <p>16 settlement agreement and we also state that it is the</p> <p>17 sincere expectation from the Counsel for the Environment</p> <p>18 that the easements will be entered into and we will take the</p> <p>19 applicant's word on that.</p> <p>20 JUDGE TOREM: All right. And I note that is from</p> <p>21 the county's perspective on the issues in the development</p> <p>22 agreement; is that correct?</p> <p>23 MR. HURSON: I missed the whole part.</p> <p>24 JUDGE TOREM: He asked if the Fish and Wildlife --</p> <p>25 MR. HURSON: If the Fish and Wildlife and county's</p>

1 use issues have been addressed it would be under that there
2 is -- the Fish and Wildlife is dealing directly with the
3 applicant as part of this stipulation so whatever additional
4 conditions they have are certainly not objected to by the
5 county.

6 JUDGE TOREM: I recognize if you are able to
7 accept the county's settlement agreement and not just take
8 further proceedings while we are here, I wanted to give you
9 opportunity to Ms. Strand, I know that this is outside the
10 scope of most of your issues but because of the conservation
11 easement and potential impact on land use if that happens
12 from the economic development group, do you have any
13 economic concerns about this settlement agreement?

14 MS. STRAND: No.

15 JUDGE TOREM: None, okay. Councilmembers, we have
16 heard from everybody.

17 Do you want to vote to accept this settlement
18 agreement now or have the lunch period to consider it as
19 well?

20 All right, we're going to take the lunch recess
21 and come back and we will reopen the land use hearing first.

22 And, Mr. Hurson, hopefully, you will be able to
23 keep it to about five minutes on consistency and then second
24 the settlement agreement and then the development agreement.

25 And from then, Mr. Taylor, could you come back

1 after lunch in case there are additional questions for Fish
2 and Wildlife and we will take up that matter.

3 It is now seven minutes after 12:00, we will be at
4 recess for lunch until 1:15 p.m.

5 (Whereupon, a recess for lunch was
6 taken at 12:07 p.m. and reconvened at 1:20
7 p.m.)

8 JUDGE TOREM: All right, we're back in session
9 now. I guess we're in the prehearing conference stage
10 regarding the Washington Department of Fish and Wildlife
11 settlement agreement and the applicant. It's now 20 minutes
12 after 1:00 on March 7, 2005.

13 While we were at lunch, the council had a chance
14 to discuss both the Fish and Wildlife settlement and the
15 matters necessary to conclude the land use hearing and we
16 will proceed with those matters in just a moment.

17 We also were handed a copy of what has been
18 proposed to be marked as Exhibit 8, which is the mark up
19 copy of Exhibit D to the development agreement and we will
20 get to that in the land use session. We have asked for it's
21 admission and go forward with that.

22 One matter that came up procedurally over the
23 lunch hour, two parties have now withdrawn from the
24 proceeding and have asked for continuing notice on the
25 service list and those are both Friends of Wildlife and Wind

1 Power and Mr. Lathrop and it's been requested that since
2 they have asked for continuing notice.

3 Mr. Peeples, your -- you and the Counsel for the
4 Environment and Ms. Strand will probably be only ones with
5 any additional filings after the hearing, it's requested
6 that they will then continue to receive as though they were
7 still a party, but they won't be filing any responsive
8 briefs or anything else, but just anything that would be
9 filed in this case be sent to them electronically so that
10 they can keep track of it and be aware of that.

11 Mr. Peeples, do you have any objection?

12 MR. PEEPLES: I have no objection, Your Honor.
13 But my understanding with regard to the Friends of Wildlife
14 and Wind Power, we don't know -- I think what they are
15 concerned about is that there was notice of any, you know,
16 substantial changes in the project. I don't think they want
17 to keep getting everything sent to them.

18 JUDGE TOREM: If that's your discussion with them.

19 MR. PEEPLES: Mr. Lathrop, does he want copies of
20 everything? That's not hard.

21 JUDGE TOREM: He has indicated electronic is just
22 fine, so if there's no need to have the expense of daily
23 copies. Counsel for the Environment, you will do the same?

24 MR. LANE: Yes.

25 JUDGE TOREM: Mr. Slothower?

1 MR. SLOTHOWER: Just want it electronically. I
2 don't want paper.

3 JUDGE TOREM: Excellent. Mr. Hurson, once the
4 county's development agreement is approved then the county
5 is out, do you want continuing notice? Just let Counsel for
6 the Environment and Mr. Peeples know what degree of notice
7 you want. I don't think that it burdens them. It's just an
8 extra email from what I can tell. So, if you would like it,
9 I am sure they would be willing.

10 MR. HURSON: There is no need for hard copies if
11 they just want to include me in the email list. We want to
12 work together on the consent documents any way, so we will
13 keep getting the information.

14 JUDGE TOREM: Excellent. Let's move along to the
15 Fish and Wildlife agreement. Only comment that I was told
16 to convey to the parties from the council as a group is that
17 the conservation agreement that was going to put into place
18 outside of the Fish and Wildlife settlement they wanted to
19 take notice of it and hope that comes to fruition.

20 But they want also to make clear that Counsel for
21 the Environment and any other interested party including Mr.
22 Tayer on behalf of Fish and Wildlife that the vote today to
23 accept the settlement agreement is not a position that that
24 has to occur and again recognize that's a voluntary step by
25 the applicant so any vote taken today has no binding impact

1 on the proposed conservation agreement and overlay as was
2 discussed earlier today.

3 Councilmembers, is there any further comment on
4 the Fish and Wildlife agreement?

5 All right, seeing none, is there a motion as to
6 the disposition of this agreement as proposed?

7 CHAIR LUCE: I move that the agreement be approved
8 as proposed.

9 MR. FRYHLING: Second.

10 JUDGE TOREM: Council, there has been a motion by
11 the Chair to approve the settlement agreement and that's
12 been seconded by Councilmember Fryhling.

13 Is there any discussion?

14 All right, seeing none, all those in favor please
15 say aye.

16 Any members opposed to accepting the settlement
17 agreement by Fish and Wildlife and the applicant?

18 Seeing none, it has been unanimously approved.

19 We will now take a quick break and we'll let Jeff
20 Tayer go on his way and we will close this prehearing
21 conference and we will now reopen the land use and just give
22 our court reporter a chance to change files.

23 * * * * *

24 (Whereupon, the prehearing conference
25 adjourned at the hour of 1:22 p.m.)

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3 IN RE: APPLICATION NO. 2004-01
4 WIND RIDGE POWER PARTNERS, LLC & WILD HORSE WIND POWER
5 PROJECT

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7 A F F I D A V I T

8 I, Roger G. Flygare, CCR, do hereby certify that the
9 foregoing transcript prepared under my direction is a full
10 and complete transcript of proceedings held on March 7,
11 2005, at the hour of 9:00 a.m., at Ellensburg, Washington.

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13 _____
14 ROGER G. FLYGARE, CSR
15 CCR No. 2248
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