

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

UPON REFERRAL FROM THE  
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL )  
SITING PERMIT APPLICATION OF ) DOCKET NO. DEQ/ISD 10-02  
PIONEER WIND PARKS, WASATCH )  
WIND INTERMOUNTAIN, LLC )

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**  
**GRANTING PERMIT APPLICATION WITH CONDITIONS AND**  
**ALLOCATING IMPACT ASSISTANCE FUNDS**

THIS MATTER came before the Industrial Siting Council (Council) on May 16, 17 and 18, 2011 and June 13, 2011, for evidentiary hearing. The record was officially closed on June 13, 2011. Council members present for the proceedings included Shawn Warner, Chairman, Sandy Shuptrine, Darrell Offe, Gregg Bierei, Jim Miller, Peter Brandjord and Mike Daly. Bridget Hill, Senior Assistant Attorney General, was also present on the Council's behalf. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceedings. The Applicant, Pioneer Wind Parks, Wasatch Wind Intermountain (Wasatch Wind) appeared by and through its counsel, Brent R. Kunz and John A. Masterson. The Industrial Siting Division (Division) appeared by and through its counsel, Assistant Attorney General, Luke J. Esch. Seven other parties participated in the evidentiary hearing including Natrona County represented by Bill Knight, Converse County represented by Quentin Richardson, the Town of Rolling Hills represented by F. Scott Peasley, Grant Ranch represented by Lynne Boomgaarden, True Ranches represented by David L. True, Chester and Jennifer Hornung (the

Hornung's) represented by Scott J. Olheiser and the Northern Laramie Range Alliance/Northern Laramie Range Foundation (NLRF) represented by Peter C. Nicolaysen. Wasatch Wind's Application (WWI), Addenda 1 and 2, Replacement Pages, Exhibit B consisting of Exhibits 1 through 26 (Exhibit 10 revised) and Rebuttal Exhibits 1 through 4, the Division's Exhibits 1 through 4, Converse County's Exhibits 1 and 2, Grant Ranches Exhibits 1 through 6 (Exhibit 6 revised), Hornung's Exhibits 1 through 4, and NLRF's 1, 2, 4, 5, 6, 10, 11, 12, 21, 24, 27, 28, 29, 34, 38 through 47, 49, 50, 51, 51PP, 52, 52R and 55 were admitted for purposes of the evidentiary hearing. The Council also received 28 limited appearance statements in this case before the close of the evidentiary hearing and considered those statements in making its final decision. The Council has considered the evidence and argument of the Applicant and the parties, and makes the following findings:

## **I. JURISDICTION**

Wyo. Stat. Ann. § 35-12-106(a) (LEXIS 2010) provides that, "No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council."

"Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least one hundred seventy eight million, three hundred thousand dollars (\$178,300,000.00) and any commercial facility generating electricity from wind and associated collector systems that consists of 30 or more wind turbines. Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2010).

Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2010) provides that upon receipt of an application for a permit, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations.

Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2010) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

- (i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;
- (ii) Notify the applicant and local governments of the hearing;
- (iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and
- (iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

Wyo. Stat. Ann. § 35-12-113(a) (LEXIS 2010) provides that within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate.

On February 2, 2011, Wasatch Wind submitted an application to the Division for an industrial siting permit to allow construction and operation of the Pioneer Wind Park I and Pioneer Wind Park II wind energy projects (the Projects) to be located in Converse County, Wyoming, near Glenrock, Wyoming. At a previously held jurisdictional meeting on May 4, 2010, Wasatch Wind showed cost estimates for the total construction is in excess of

\$178,300,000.00. The Projects also consisted of more than 30 electricity generating wind turbines. Therefore, this Council has jurisdiction to hear and decide this matter.

## **II. STATEMENT OF THE CASE**

Wasatch Wind, doing business as Pioneer Wind Park I and Pioneer Wind Park II filed its Application for an industrial siting permit pursuant to Wyo. Stat. Ann. § 35-12-109 (LEXIS 2010) on February 2, 2011. The proposed Projects are two wind-powered electricity generating facilities consisting of up to 62 wind turbine generators to be constructed in a two phases. The Projects are located six miles south of Glenrock, Wyoming on 28,000 acres of leased private fee lands in Converse County. As originally submitted, the Division's staff found that the Application was lacking some information and asked Wasatch Wind to supply additional information. Upon the submittal of the additional information, the Division's staff determined that Wasatch Wind's Application was complete and in full compliance with Wyoming law and was ready for the Council's determination as to whether a Permit should be issued. Wasatch Wind requested the Council approve the Application as submitted with Addenda and exhibits. The Division and seven separate entities filed notices to become a party to these proceedings and appeared at the four day evidentiary hearing. Two parties opposed the Projects and five parties were in favor of issuing the permit.

## **III. ISSUES AND CONTENTIONS**

The sole issue in this case is whether Wasatch Wind has proven, by a preponderance of the evidence, that the industrial siting permit Application regarding the Pioneer Wind Park I and Pioneer Wind Park II meets the requirements of the Wyoming Industrial Development

Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LEXIS 2010) and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing the proposed wind energy generation Projects. If the Council decides to issue the industrial siting permit, it must also decide what, if any, conditions to place on the permit.

Wasatch Wind asserted its Application was complete and in compliance with all applicable laws, will not pose a threat of serious injury to the environment, will not substantially impair the health, safety or welfare of the inhabitants in the affected area and that it has, through its principal investor, the financial resources to construct, maintain, operate, decommission and reclaim the facility.

Natrona County, Converse County, the Town of Rolling Hills, Grant Ranch and True Ranches were all in support of the Projects.

The Hornung's were opposed to the Projects and argued that because they reside just over two miles from the first phase of the Projects, the wind turbines would destroy their view shed, change the character of the land, impair the health of their family, harm wildlife and have significant noise impact.

NLRF opposed to the Projects asserting that the location of the Projects is not suitable for industrial development, the proposed Projects will substantially impair and injure the area and people living in and using the area and that Wasatch Wind could not show it has the financial resources to construct, maintain, operate, decommission and reclaim the facility.

#### **IV. FINDINGS OF FACT**

1. The Applicant, Wasatch Wind, is an independent power producer organized as a Delaware Limited Liability Company based in Park City, Utah. Wasatch Wind is the owner of

Pioneer Wind Park I and Pioneer Wind Park II. Wasatch Wind set up limited liability corporations that will hold the assets, leases and any other permits in Pioneer Wind Park I and II. *Transcript of Proceedings (hereinafter Tr. of Proc.), p. 33; Exhibit WWI-1, pp. ES-i and 1-1.*

2. Prior to Wasatch Wind filing its Application in this matter, company representatives and the Division's staff conducted a jurisdictional meeting on May 4, 2010, to discuss the details of the Projects. The Division reviewed the financial budget for the Projects and determined that the cost exceeded the statutory dollar threshold of \$178,300,000.00 and the statutory limit of 30 or more turbines per Project. The Division notified the Applicant by mail on May 4, 2010, that a permit was required. *State's Exhibit 1, p. 4.*

3. Beginning in February 2010, until the filing of the Application in February 2011, Wasatch Wind representatives visited various state agencies, as well as the residents and governing bodies of the local governments in Natrona and Converse Counties. An open house for the community was held on November 9, 2010, in Glenrock. The open house was well attended by over 150 interested citizens. A list of all meetings and details of the public and government involvement is found in Chapter 4 *Public Involvement* of the February 2, 2011, Application. *Exhibit WWI, Chapter 4, Public Involvement; State's Exhibit 1, p. 6.*

4. On February 2, 2011, Wasatch Wind filed its Application with the Division requesting a permit to allow construction and operation of two proposed wind powered electricity generating facilities (the Projects) known as the Pioneer Wind Park I and Pioneer Wind Park II in Converse County just south of Glenrock. Each Project is comprised of 31 General Electric (GE) 1.6 megawatt wind turbine generators for a total capacity of 49.6 megawatts. PacifiCorp, which operates Rocky Mountain Power, will purchase the energy produced by the Projects as part of two, 20 year power purchase agreements. A Project

substation will be constructed on site, and approximately a 230,000-volt transmission line will interconnect to the Rocky Mountain Power transmission line. *State's Exhibit 1, p. 4; Exhibit WWI-1, pp. ES-i-ii, 1-1, 2-5, 2-16.*

5. The Division staff determined the area primarily affected is a polygon that includes the Project site, the municipalities of Douglas, Rolling Hills, Glenrock, Evansville, Bar Nunn, Mills and Casper and the inclusive areas of Converse and Natrona Counties. Examination copies of the Application were filed on February 3, 2011, with the Converse County Libraries in Glenrock and Douglas, the Natrona County Library and with the State Library in Cheyenne. Also on February 3, 2011, the Division staff distributed copies of the Application to the state agencies pursuant to Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2010) to obtain information and recommendations relative to the impact of the proposed Project as it applies to each agency's area of expertise. *State's Exhibit 1, pp. 6 and 7.*

6. The Project site is located west of Interstate 25 south of Glenrock. Pioneer Wind Park I is located approximately 10 miles south of Glenrock and Pioneer Wind Park II is located approximately 12 miles south of Glenrock in Converse County, on 28,867 acres of private fee lands. No state or federal lands are involved in the Projects. Mormon Canyon Road bisects the two Projects and will provide the main access route for construction, operation and maintenance vehicles. *Exhibit WWI 1, pp. 2-4 through 2-10, 2-17; Appendix A.*

7. All of the material constituting the filing of the Application was received by the Division on February 2, 2011. The Application consisted of 60 copies of the hardcopy document, *Section 109 Permit Application, Pioneer Wind Park I and Pioneer Wind Park II January 2011*, an Adobe .pdf computer file of that document, the payment of the application fee in the amount of \$50,091.00 as required by W.S. 35-12-109(b), and a letter of transmittal by

Christine Mikell, Director of Development, Wasatch Wind, asking for the permit and attesting to the truthfulness and accuracy of the Application. The Division staff checked the contents of the Application against the applicable statutes and rules of the Council and determined that additional information was necessary. The Applicant provided a partial reply on March 31, 2011 and an updated site plan on April 1, 2011, which the Division's staff incorporated into the Application as Addendum #1 and Addendum #2. On April 15, 2011, the Applicant also provided Replacement Pages to the Application. *State's Exhibit 1, p. 4; State's Exhibit 4, p. 1.*

8. Pursuant to the Industrial Siting Statutes, the Division staff placed a legal advertisement printed in the Douglas *Budget* on April 20, 2011, the Glenrock *Independent* printed on April 21, 2011 and the *Casper Star Tribune* printed on April 22, 2011, publishing notice of the contested case hearing on Wasatch Wind's Application for an industrial siting permit. *Tr. of Proc., pp. 8-9.*

9. Christine Mikell, (Mikell) is the Development Director for Wasatch Wind. Mikell testified two phases are involved in the application, each consisting of 31 turbines for a total of 62 turbines. A new 6.5 mile transmission line will be constructed to connect to a PacifiCorp Rocky Mountain Power 230 kV line. In January 2011, Wasatch Wind signed a turbine supply agreement with GE for the 62 turbines. The Projects are located entirely on approximately 28,000 acres of leased private land from 13 landowners. Both Projects have 20-year Power Purchase Agreements with Rocky Mountain Power, conditioned on the Pioneer Wind Park I operating by December 2011 and Pioneer Wind Park II operating by December 2012. A 60-day reprieve is built into the contract in the event of a short delay in the start of construction. *Tr. of Proc., pp. 34-38; Wasatch Rebuttal Exhibit 1.*

10. According to Mikell, the turbine site was chosen because the data collected by Grant Ranch, the location of the Projects, was shown to be extremely windy. Additionally, transmission lines were within close proximity to the proposed site and a market to sell the power existed. *Tr. of Proc.*, pp. 40-42.

11. Due to concerns expressed by the citizens of the area, Wasatch Wind agreed that, subject to FAA approval, lighting technology would be retrofitted on the turbines to turn off the blinking red lights unless a plane is flying nearby. Mikell testified that Wasatch Wind would not be opposed to a permit condition requiring installation of the technology once it is approved. According to Mikell, only one resident would be affected by shadow flicker which would be noticed nine minutes each year. That resident is a lessor and has no objection to the Projects. Additionally, on April 1, 2011, a revised turbine layout was submitted to the Division. The revision occurred as a result of view shed concerns of Glenrock citizens surrounding a golf course, and the close proximity to the Huxtable Ranch listed on the National Historic Register of Places as a historic property on April 7, 2011. Huxtable Ranch, also known as the White Creek Ranch, is owned by Kenneth Lay. A total of seven turbines were moved, five to a string closer to the Hornung's property. Portions of seven turbines will be visible from the White Creek Ranch driveway. Seven residences are within two miles of the closest turbine. Six of the seven residences have signed leases with Wasatch and none are opposed to the Projects. Twenty-one residences are within five miles of the Projects, and six have publicly opposed the Projects. Thirty eight residences are within 7.6 miles from the nearest turbine and one additional resident opposed the Projects. *Tr. of Proc.*, pp. 54-58, 104-109, 112; 1060-1061;1066; *Wasatch Wind Exhibits 7, 9 and 10R; Rebuttal Exhibit 1.*

12. Since the development process for the Projects began, considering the land leases, wildlife and cultural survey costs, security deposits and turbine deposits, Wasatch Wind has spent approximately \$12 million. In Mikell's opinion, the Projects will not pose a threat of injury to the environment or the current or anticipated residents of the area. Mikell also expressed her opinion that the Projects will not substantially impair the health, safety or welfare of the current or anticipated inhabitants. *Tr. of Proc., pp. 62-63.*

13. Mikell agreed that Wasatch Wind would abide by the 18 conditions set forth in the Division's recommendation to the Council. However, Wasatch Wind's wildlife surveys will not be completed until February 2012 and the agreement with PacifiCorp is that the Pioneer Wind Park I would be on-line by March 31, 2012. Mikell suggested a modification to the Permit Condition #16 which requires two full years of wildlife surveys before construction begins. Mikell requested that the Applicant could, at its own risk, begin making improvements to Mormon Canyon Road, prior to the two year completion of surveys. This would help meet the goal of being on-line by the end of year 2012. *Tr. of Proc., pp. 63-68, 1063.*

14. Mikell admitted that, prior to construction, Wasatch Wind intended to sell the permit and the Projects to Edison Mission Wind. Mikell also admitted that to establish financial capability to construct, maintain, operate and decommission the facility, Wasatch Wind presented financial information of Edison Mission Wind and not Wasatch Wind. Wasatch Wind will be a long-term owner in that it will share in the royalties, but Wasatch Wind will not operate the Projects. According to Mikell, it is standard in the industry for an investor, rather than the original applicant, to come in and invest in the project and then operate the project. Mikell testified that it is ordinary business practice to obtain a Permit and someone else finance the project. *Tr. of Proc., pp. 75-76; 1068.*

15. Wasatch Wind will use Interstate 25 as the transportation corridor and also has a draft agreement with the Wyoming Department of Transportation to use Mormon Canyon Road exclusively for transporting the turbines to the Project site. Mikell agreed that Wasatch Wind would make costly improvements to Mormon Canyon Road due to the road's current poor condition. *Tr. of Proc., pp. 86-90.*

16. According to Mikell, the Permit application does not contemplate Wasatch Wind having its own quarry on site. Wasatch Wind will comply with all emissions laws and will not exceed air quality permit conditions. *Tr. of Proc., p. 92.*

17. Spencer Martin (Martin) is the Senior Project Development Manager for Wasatch Wind and is the in-house environmental expert. Martin managed the preparation of the Application. Wildlife and cultural surveys were conducted by SWCA Environmental Consultants, Blankenship Consulting performed the socioeconomic analysis and TRC Environmental Consulting provided the scenic resources analysis. Additionally, a fatal flaw analysis was provided to Wyoming Game and Fish. Game and Fish recommended two years of pre-construction survey data to avoid and minimize impacts to wildlife and resources. Seven of eight survey seasons will be completed prior to the proposed June 2011 initiation of construction on Pioneer Wind Park I as two years of surveys will not be completed until October 2011. Martin testified that Wasatch Wind would continue monitoring to determine effects to wildlife and useful information would result if the Council would make an exception to the two year data collection recommendation by Game and Fish. Based upon his knowledge, training and experience, Martin opined that the Projects would not pose a threat of serious injury to the environment. *Tr. of Proc., pp. 139-151.*

18. Martin testified that prairie dog towns are very important to raptors as prey sites. Martin admitted that 8 to 10 turbines were relocated and placed between two prairie dog towns at the proposed Pioneer Wind Park I site. According to Martin, the data on flight paths do not show a defined pathway between the prairie dog towns. Martin admitted the additional data collected during the two year survey may be useful in ascertaining whether there is injury or impairment to the environment. *Tr. of Proc., pp. 174-177.*

19. Game and Fish representatives Mary Flanderka (Flanderka), Daryl Lutz (Lutz) and Rick Huber (Huber) were present at the May 16, 2011 contested case proceeding. Flanderka confirmed that it would be difficult to speculate what damage would occur if the permit was granted and construction began prior to the two year data collection. Flanderka agreed with Special Condition #16 as recommended by the Division, to require a second year survey unless Game and Fish authorizes the start of construction prior to the two year data collection. Flanderka further testified that beginning to make improvements to Mormon Canyon Road prior to the two year data collection would not result in any major disruption of wildlife. *Tr. of Proc., pp. 201- 213; 1155.*

20. Michelle Stevens (Stevens) is the Director of Marketing and Communications for Wasatch Wind. Stevens was responsible for meeting the notification requirements in the statute and writing Chapter 4 *Public Involvement* in the Application. Stevens testified that, in consultation with the Division and Blankenship Consulting, she determined the area of site influence and the local governments that would be primarily affected. The list of local governments and joint powers boards she contacted are reflected in Chapter 4, as well as all the meetings held. Over 150 people attended the November 9, 2010, open house held in Glenrock, which was widely advertised. Stevens testified that 4,000 mailings were sent to residents of

Converse County. The Director of Land Acquisition, Sam Lichenstein (Lichenstein), attended the meeting and spoke to the Hornung's. Other than mailing, Wasatch Wind has had no further direct contact with the Hornung's. Stevens and Lichenstein also had direct contacts with Kenneth Lay, who is opposed to the Projects. *Tr. of Proc., pp. 369-379.*

21. Stevens testified that Wasatch knew that visual aesthetics were a concern in the area. As a result, if approved by the FFA, Wasatch Wind will use AVWS radar system which keeps night skies dark and the lights on the turbines off unless an aircraft is approaching. Wasatch also chose seven key observation points and did visual simulations which were presented at the November 9, 2010, open house. Turbines were only visible from four of the observation points. Stevens also met with 20 landowners in Glenrock who expressed concerns about the turbine locations. Turbines were relocated as a result of that meeting. In Stevens' professional opinion, the Pioneer Wind Park I and Pioneer Wind Park II met the notification requirements in the statute. *Tr. of Proc., pp. 379-383.*

22. George Blankenship (Blankenship) conducted the socioeconomic assessments for Wasatch Wind. Blankenship has 32 years of experience in conducting socioeconomic assessments and has worked on 15 industrial siting applications. Blankenship reviewed monitoring reports from nearby wind farm projects to determine the residency distribution during the peak quarters of construction. Within the three nearby projects, over 95 percent of non-local construction work force lived in Converse and Natrona Counties. Of that amount of workers, 95 percent lived in the three communities of Glenrock, Douglas and Casper. Pioneer Wind Park I construction schedule starts with 100 workers in the first month and peaks at 168 workers in the second month. The work force then drops to 80 workers after the first two months and in the final month, drops to 45 workers. Pioneer Wind Park I estimates 17.8 construction worker

months per turbine, which is consistent with the two most recent wind projects permitted by the Council. Additionally, an estimated 30 percent local hiring during the peak months was reasonable in light of the other recently permitted projects. *Tr. of Proc.*, pp. 222-230.

23. Blankenship also testified that the Application contains a construction labor cost of \$9 million which includes construction related per diem and travel costs. It was Blankenship's opinion that based on the size of the Projects and the short duration of both construction work schedules, the effects of the social and economic conditions like agriculture, law enforcement and emergency services, would be minimal. Additionally, housing availability in the region will meet the demands of the Projects. *Tr. of Proc.*, pp. 231-235.

24. Blankenship estimated sales and use tax revenues \$3.5 million and lodging taxes generating \$18,500.00. Ad valorem tax revenues ranged from \$4.4 million to \$9.7 million over the first ten years of full production and energy taxes would range from \$1.2 to \$1.6 million for the same period of time. *Tr. of Proc.*, pp. 236-239.

25. Blankenship also assessed the effects on outdoor recreational resources and opportunities and concluded that although the Projects would affect the recreational resources and opportunities, especially hunting and animal watching on private lands, those activities would return to normal after construction is over. Based on his training, education, experience and assessments he did for the Projects, it was Blankenship's opinion that neither of the Projects, individually or in concert, would pose a threat of serious social or economic injury to the current or expected future inhabitants of the area. Blankenship admitted that he did not interview any of the non-participating landowners surrounding the Projects or assess the effect the Projects would have on land values. *Tr. of Proc.*, pp. 240-242, 255- 257; *WWI, Chapter 5*.

26. Jason Zingerman (Zingerman) is the Vice President of Construction for Renewable Energy Systems Americas, who have built 5,000 megawatts of wind power in the United States. Zingerman is responsible for the budget and contract management, subcontracting and scheduling of the Projects. Zingerman has constructed 9 wind projects. When the turbines are delivered, Zingerman will oversee the assembly of the turbines and include safety and environmental monitoring and reporting. The Project team will consist of discipline managers, including electrical, civil and roads. Zingerman holds a job fair for local hiring. Zingerman also has a drug and alcohol policy which includes pre-employment and random testing. Zingerman asserted that the Projects would be built in compliance with all state and federal laws for the construction of a wind facility. Zingerman also assured the Council that if agreements are obtained from WYDOT and Converse County regarding upgrading Mormon Canyon Road, he will be able to construct, maintain and use the road for transportation of the turbines. Finally, Zingerman also agreed that a Permit Condition would be appropriate requiring Wasatch Wind to place notices in the local papers that the Project is nearing completion to help ensure subcontractors pay their local suppliers before leaving town. *Tr. of Proc., pp. 260-284.*

27. George Hessler (Hessler) is a principal of Hessler Associates, Inc., an acoustical engineering firm. Hessler has written three peer-reviewed articles on wind turbine sounds and has assessed noise on 60 wind turbine projects over ten years. According to Hessler, eight projects have been completed from beginning to end and he was able to go back and test installed noise levels and correlate them with the response he was getting from the community. Hessler authored the peer-reviewed article, *Recommended Sound Level Design Goals and Limits for Wind Turbines in the United States*. According to Hessler's research the recommendation for wind turbine farms is to not exceed 40 decibels (dBA). During calm and still conditions, the

expected level of noise is in the 20 to 25 dBA range. Hessler measured the ambient sound level of two different locations in the Projects area. The average sound level in the lower valley with a wind level at 10 miles per hour was an ambient noise level of 45 dBA. At two open plain elevations, the wind level was 18, 19 and 20 miles per hour and the ambient noise level was 50 and 52 dBA. With wind turbines, when the conditions are quiet, the turbines simply do not operate. When the wind is really blowing, an ambient background noise level is in the 45 dBA range and will mask or drown out the sound of the wind turbine. Through a sophisticated model which takes into account topography and the amount of ground absorption, Hessler was able to predict sound levels from the wind turbines at any location. The sound level at the two closest participating residences, Margaret Hiser, is 35 dBA and Mowry at 40 dBA. The sound level at the closest non-participating level, Craig Hiser, is at 34 dBA. The sound Level at the Hornung residence is 27 dBA and at Lay's residence is 24 dBA. Anything under 25 dBA is considered extremely quiet. *Tr. of Proc., pp. 1094-1106; Wasatch's Rebuttal Exhibits 1-4.*

28. Neal Hilston (Hilston) is a self-employed real estate broker and is a rancher. Hilston is a Certified General Real Estate Appraiser in Wyoming. According to Hilston, the report entitled Property Value Impact Report for Pioneer Park I and Pioneer Park II, prepared by NLRP's witness, Kurt Kielisch Kielisch), as reflected in *NLRP's Exhibit 51*, failed to take into consideration the unique characteristics of Wyoming property and its residents. The Kielisch report did not study or report on wind energy in Wyoming or the neighboring states, rather it detailed information from Europe and the eastern United States. Hilston testified that his experience in Wyoming reflected large ranches that are in open areas and enormous energy production with oil wells and coal mines. In Hilston's opinion, the report prepare by Kielisch had no bearing on the impact of wind farms on property values in rural Wyoming. Hilston

testified that for a valid report on the impact of property values in the area of the Projects, he would travel to neighboring states and look for sales in the Rocky Mountain area for land adjacent to wind farms. Hilston has appraised six or seven ranches in the immediate area where a wind farm was adjacent to the property. Hilston was not able to find any indication that the value was increased or decreased because of the proximity to the wind farm. Hilston also refuted the representation made by Kielisch that Hilston had reported to Kielisch that the wind farm would hurt the market, reduce the value of the property or change the highest or best use of the property. *Tr. of Proc., pp. 1129-1149.*

29. To establish financial assurance capabilities to construct, maintain, operate and decommission the Projects, Wasatch Wind presented the testimony of Sanjay Bhasin, the Managing Director of the Business Development Group for Wind Energy from Edison Mission Energy in Orange County, California. Edison Mission Energy is an independent power producer, investing in coal and wind energy facilities around the nation. Edison Mission Wind is a subsidiary of Edison Mission Energy and the company that holds a number of wind energy investments across the United States. Edison Mission Energy has \$9 million in assets, \$1.1 billion in cash and cash equivalent and \$2.4 billion in revenue last year. Edison Mission Energy ranks number 6 in the top 12 companies in the United States that own wind energy projects. It currently owns 4 other wind energy projects that will be completed and operating within the next 60 days. *Tr. of Proc., pp. 315-324.*

30. Bhasin testified that Edison Mission Wind has a signed option with Wasatch Wind to own and thereafter operate 100 percent of Pioneer Wind Park I and Pioneer Wind Park II. On the date of the contested case hearing in this matter, Edison Mission Wind had no ownership interest in Wasatch Wind, but would provide the equity or capitol to build the Projects

if the Permit is issued. From a financial point of view, Edison Mission Wind was willing to assure that the facility could be constructed, operated, maintained, decommissioned and reclaimed. Bhasin testified that if the permit is granted, Edison Mission Wind has the exclusive rights to purchase the Projects and if purchased, will provide the financing, construction, operation and maintenance of the Projects. Edison Mission Wind would exercise its option to purchase the Projects when the Industrial Siting Permit was issued. Edison Mission Wind would also agree to comply with all the permit conditions ordered by the Council, including the \$18 million surety bond for decommissioning as recommended by the Division, as well as all county road use agreements. *Tr. of Proc., pp. 325-335.*

31. Bhasin admitted that pursuant to Wasatch Wind's Exhibit 25, the relationship between Wasatch Wind and Edison Mission Wind was on the level of a non-binding Letter of Intent. Bhasin also admitted that Edison Mission Energy's 10-K showed that the total available liquidity was \$1.099 billion and that payments due in less than one year, as of December 31, 2010, was \$1.8 billion, exceeding the cash and borrowing lines by \$600 million. As of March 31, 2011, the operating income for Edison Mission Energy was \$17 million and the net loss for the company was \$20 million according to the 10-Q. For the same period in 2010, it was \$130 million. For year 2010, the company had \$2.79 billion in equity and \$4.3 billion in liabilities. Bhasin also admitted that Edison Mission Energy's credit rating was currently B minus which is considered speculative or junk status rating by rating agencies. According to Bhasin, downturn was due to the cyclical nature of the utility business, coal-fired facilities and the difficult economic times. *Tr. of Proc., pp. 338-349; Wasatch Wind Exhibit 25.*

32. Dr. Tom Schroeder (Dr. Schroeder), Program Principal for the Industrial Siting Division, Department of Environmental Quality, testified at the May 17, 2011, contested case

hearing in this matter. Dr. Schroeder receives and processes applications for permits by the Industrial Siting Council and personally reviewed and processed the Wasatch Wind Application. Dr. Schroeder confirmed that as part of the process, a jurisdictional meeting was held with the Applicant on May 4, 2010. A determination was made that the Projects cost and number of wind turbines was in excess of the statutory threshold for obtaining an industrial siting permit. The Application for the two-phase Project was subsequently filed on February 2, 2011. *Tr. of Proc.*, pp. 388-390; *State's Exhibit 1*, p. 4.

33. According to Dr. Schroeder, the location of the towers and number of towers changed during the application process. Additional information was provided by the Applicant as Addendum 1, Addendum 2 and Replacement Pages. Collectively, the documents were considered to be the Application. According to Dr. Schroeder, the proposed Application was complete for the filing of the information and was referred to 19 state agencies pursuant to Wyo. Stat. Ann. §35-12-110 for comments. Dr. Schroeder stated this was the first Project on the south side of Interstate 25 and south of the Platte River. Dr. Schroeder testified the Application contained an evaluation of the potential impacts and proposals for alleviating social and economic impacts on all the facilities and resources set forth in Wyo. Stat. Ann. §35-12-109 (xiii). Dr. Schroeder believed the Application adequately described the nature and location of the Projects, sufficiently set forth the time, commencement and construction of the Projects and adequately addressed the number and estimated job classifications. Permit Condition # 1 in *State's Exhibit 2* adequately covered the requirement that Wasatch Wind obtain all required state and local permits prior to construction. Dr. Schroeder believed potential environmental and reclamation issues were adequately addressed. With regard to the bonding for decommission and reclamation, Dr. Schroeder recommended this Council adopt Permit Condition #15 requiring

the Applicant to provide a surety bond or similar security that is acceptable to the Wyoming Treasurer in the amount of \$18,767,000.00. *Tr. of Proc.*, pp. 391 - 413; *State's Exhibit 1*, p. 15.

34. Dr. Schroeder further testified that all state agencies responded to a request for comments on the Application. No state agency recommended denial of the Application. The Game and Fish Department expressed a concern that the two-year wildlife survey had not been completed. As a result, Dr. Schroeder recommended Condition #16 which recommends the two-year survey to be complete prior to construction and satisfactory advice from Game and Fish. To address the concerns of the State Fire Marshal and the State Electrical Inspector, special Condition #17 was recommended by Dr. Schroeder which requires the development of a protocol to include training on fire prevention and suppression, as well as emergency rescue training. Additionally, Dr. Schroeder opined that with the additional Permit Condition #15 on the industrial siting permit, the Applicant had shown adequate financial assurance to decommission the project. Dr. Schroeder recommended approval of the Project with the recommended permit conditions as set forth in *State's Exhibits 1, 2 and 4*, as the Application was complete per the statutory requirements. Dr. Schroeder had no recommendation on the Applicant's capability to construct, operate and maintain the facility. Rather, Dr. Schroeder opined that the Applicant had presented enough information to satisfy the statutory requirement of the Division determining completeness constituting an adequate filing of the Application per Wyo. Stat. Ann. §35-12-109. Dr. Schroeder's opinion was that the Council, after hearing the Applicant's witnesses, would make the determination on financial capability pursuant to Wyo. Stat. Ann. §35-12-113. *Tr. of Proc.*, pp. 434-444.

35. Finally, Dr. Schroeder testified that as a result of the Natrona and Converse County Commission's inability to agree upon the distribution of impact assistance funds, a

modeling process that had been approved by the Council in 2007 was used to establish the recommendation. The recommendation was 68 percent of the impact assistance fund allocated to Natrona County and 32 percent of the funds allocated to Converse County. *Tr. of Proc.*, pp. 407-408.

36. Richard Grant, Jr. (Rick) is a fourth generation landowner and cattle rancher in the Box Elder Canyon area. In an effort to secure sustainable revenue generated by his land, in March 2008 Rick established an anemometer on his property to study the wind speeds and direction. Rick purchased and installed a computer program and monitored the data from the met tower. Rick then negotiated a wind lease agreement with Wasatch Wind for Pioneer Wind Park I and Pioneer Wind Park II on 3,905 acres of his property. The proposed location of the turbines is reflected in revised GR Exhibit 6. *Exhibits GR 1, 2, 3, and 6 revised; Tr. of Proc.*, pp. 474-482.

37. Rick expressly reserved the right to use his property for hunting, recreation, grazing, agricultural and mineral exploration purposes. Rick was also involved in developing the reclamation and wildlife conservation plans with Wasatch Wind and Wyoming Game and Fish Department and is a participant in the Technical Advisory Committee (TAC) with Wyoming Game and Fish. Rick also participates in an organization known as Renewable Energy Alliance of Landowners (REAL) which is a group of landowners in six southeast counties in Wyoming, encompassing Converse, Niobrara, Platte, Goshen, Albany and Laramie Counties. REAL consists of 300 landowners and 700,000 acres of lands where the landowners are attempting to develop an association to make wind resources on their properties available for leasing. Rick represented that his contract with Wasatch Wind has financial assurance requirements that bind the owner of the Projects to perform within certain time frames and specifications and support

the financial assurance requirements of the Industrial Siting Act. Rick also testified to his view shed from his ranch. As Rick looks out his front door, he looks past four double power pole transmission lines, the interstate, a housing development, a railroad track, Dave Johnson Power Plant and Top of the World wind project. *See GR Exhibits 1 through 6 (6 revised); Tr. of Proc., pp. 483-515.*

38. Mark Grant (Mark) is a managing partner of Turtle Rock Ranch and has leased lands to Wasatch Wind and three turbines will be located on his ranch. Mark will receive lease payments for the land used by Wasatch Wind and royalties from the production of electricity from the turbines. Mark testified the value of his ranch will increase as a result of the Wasatch Wind Projects because of the steady, reliable source of income as part of the land. Mark represented that his property is almost entirely within the Deer Creek Hunter Management Area, which a voluntary program through Wyoming Game and Fish specific to elk. Mark testified that the construction activities of the Projects will not affect the hunter management area. Mark was also aware that the Projects are likely to be sold, which does not affect his willingness to participate. *Tr. of Proc., pp. 285-303.*

39. David True (True) managing partner of True Ranches testified in support of the Projects. The True family has been involved in Wyoming agriculture for over 50 years. An area of the VR Ranch owned by True will host a significant portion of the Projects, including most of the elements of the infrastructure of the wind farm; roads, turbines, power lines, transmission line exporting to the grid, as well as the grid-connecting substation. True believed the reclamation requirements and financial assurances in his contract with Wasatch Wind benefited the area around the Projects. True's agreement with Wasatch Wind allows the Projects to change

ownership, but places financial assurance requirements on the buyer and become effective prior to construction. *Tr. of Proc.*, pp. 216-219.

40. Converse County Commissioner, Jim Willox (Willox), testified in support of the Projects. According to Willox, Wasatch Wind submitted a completed application to the Converse County Board of Commissioners for approval of a county permit on February 22, 2011. A public hearing was held on April 11, 2011 and the County Commissioners approved the permit on May 3, 2011. The permit requires Wasatch Wind to enter into a road use agreement for improvement and use of the Mormon Canyon Road. Wasatch Wind must provide a bond in the amount of \$850,000.00 to \$900,000.00 for two miles of paved roads. All improvements would be done to county standards. Converse County has a set-back limitation for turbines from tower height to be greater than one mile from the nearest residence. The proposed Projects are two and one-half miles from the nearest residence. *Tr. of Proc.*, pp. 449- 452; 1163; 1169.

41. Willox further testified that a concensus was not reached between Converse County and Natrona County regarding the allocation of impact assistance funds. Willox disagreed with the allocation of impact assistance funds as recommended by the Division wherein Natrona County would receive 68 percent of the funds and Converse county would receive 32 percent of the funds. Willox testified that 100 percent of the project is in Converse County. A previous wind project, Campbell Hill, included use of a private road from Natrona County to the project site and no Converse County roads were used. For that project, the impact assistance allocation was 65 percent to Natrona County and 35 percent to Converse County. The majority of work force came from Natrona County for that project. The Wasatch Wind Projects are located 20 miles farther south in Converse County, Converse County roads will be used and the work force is anticipated to stay in Converse County. As a result, an increase in law

enforcement, fire protection and medical emergency services is anticipated. Willox's Exhibit 2 reflected over 1,200 places available for the work force to stay in Converse County. Willox requested the Council to allocate two-thirds of the impact assistance funds to Converse County and one-third to Natrona County. *Exhibits CC -1 and 2; Tr. of Proc., pp. 453-466.*

42. Devonie Mueller (Mueller), Mayor of Rolling Hills, testified in support of the Projects. Mueller testified that Rolling Hills received impact assistance money from two other wind parks in the vicinity. Mueller disagreed with the Division's recommendation regarding allocation of impact assistance funds between Natrona County receiving 68 percent and Converse County receiving 32 percent of the funds. The population of Rolling Hills is 500 and emergency management and fire protection are shared with the Town of Glenrock. Mueller agreed with the Converse County Commissioner's testimony that a fair distribution of the funds would be two-thirds to Converse County because the Projects are located within Converse County, and one-third to Natrona County. *Tr. of Proc., pp. 467-470.*

43. Heather Duncan-Malone (Duncan-Malone) made a statement on behalf of the Natrona County Commissioners stating that Natrona County will experience impacts from the Projects, including an in-flux of temporary workers staying in hotels and RV parks, as well as impacting the law enforcement and social services. Natrona County agreed with the Division's recommendation on the allocation of impact assistance funds in the amount of 68 percent to Natrona County and 32 percent to Converse County. *Tr. of Proc., p. 969.*

44. Jennifer Hornung (Hornung) testified against the Projects and expressed concerns on behalf of her family. Hornung is a school teacher in Glenrock and her husband, Chet, is a home builder. The Hornung's have two-year old twin daughters. Hornung's father purchased 273 acres of land in the Box Elder Canyon and Hornung purchased 30 acres where they built

their home in 2006. Hornung displayed photographs taken from her home. One photograph depicted a great room with 12 large windows that face the proposed location of the turbines in Pioneer Wind Park I. According to Hornung, the turbines are 2.7 miles from the deck of her home and just over two miles from her property line. Hornung testified that portions of all 31 turbines of Phase I of the Projects will be visible from her home. Hornung expressed concern for the health and well-being of her children after researching on the internet and discovering articles discussing adverse effects of infrasonic waves, particularly causing inner ear problems and hypertension. Hornung was concerned that every night at sunset, the turbine blades would cause a flicker effect as sun moves past the turbines. Hornung also believes the eagle and elk populations in the area will disappear, affecting their quality of life. Hornung testified to her belief that her property value will be reduced after researching the issue on the internet. Because the Hornung's property is downwind, Hornung believes all the dust, trash and noise will travel in their direction. Hornung was also concerned that the construction vehicles would endanger her family's lives because the road is winding and narrow. On cross-examination, Hornung admitted that she had not viewed or listened to wind turbines at a distance of 2.5 miles. Hornung also admitted that she uses Box Elder Road to drive to Glenrock for her job, and not Mormon Canyon Road which is the road proposed to be utilized for construction vehicle traffic. *See Exhibits JH 1 through 4; Tr. of Proc., pp. 517-580.*

45. The Northern Laramie range Alliance is a non-profit organization with over 900 members, primarily located in Natrona, Converse and Albany Counties. The Northern Laramie Range Foundation is a non-profit operating foundation that seeks to engage in conservation and to educate the public about the natural and historical resources that exist in the Northern Laramie Range. On behalf of NLR 9 witnesses testified at the May 17 and May 18, 2011 hearings.

46. Christine Vircks (Vircks) provides administrative services on a volunteer basis for NLRA. NLRA currently has 906 members, 509 of the members are from Converse County. The NLRA's steering committee developed a poll to take of Converse County to determine who was in favor of wind development in the Northern Laramie Range and Vircks contacted AMBI, a mail and marketing service in Casper in October 2010. A cover letter and postcard were sent to all mailing addresses in Converse County. The cover letter explained that Wasatch Wind was attempting to install an industrial scale wind facility of 66 turbines on 30,000 acres of land in the Boxelder-Mormom Canyon area of Converse County. The cover letter also explained that responding on the postcard as to whether they were for, against or had no opinion, was the only opportunity the citizens of Converse County would have to let the public officials, and Wasatch Wind, know whether they wanted the development in the Converse County mountains. Of the 6,217 postcards sent asking the resident to mark "I support it", "I oppose it" or "I don't have an opinion" of the Projects, 1,441 postcards were returned. 1,021 postcards opposed the Projects and 345 were in favor. Vircks admitted that responding on the postcard was not the only opportunity Converse County citizens had to express their opinion regarding the Projects. *Tr. of Proc.*, pp. 581-600; *NLRF's Exhibits 2, 5.1, 5.2, 5.3R*.

47. Sandra Updike (Updike) is the general manager for AMBI Mail and Marketing in Casper. Updike received a request from Vircks to mail the survey asking for an opinion of developing wind in Converse County. Updike sent the postcards reflected in *NLRF's Exhibit 5.2*. and also received the returned postcards. A random number was placed on each postcard to ensure no duplicates were received. Updike testified that 23.2 percent of the postcards were returned and she developed the spreadsheet reflecting the results as shown in *NLRF's Exhibit*

5.3R. Updike admitted that the survey or poll was not scientifically conducted and the respondents were not randomly selected. *Tr. of Proc.*, pp. 607-629.

48. Bret Frye (Frye) is a landscape contractor and owns property in the Northern Laramie Range. Frye has been a hunting guide of big game in the Northern Laramie Range, and Frye's father was an outfitter. According to Frye, hunting around a commercial wind farm operation would not be an "outdoor experience" because of the people and obstructions causing ricocheting bullets. Frye is a member of the NLRA's steering committee and NLRA members have communicated their concerns to him, including a concern that the Project will continue to grow, that hunting would be dangerous around the turbines and property owners' view shed would be lost. *Tr. of Proc.*, pp. 638-650.

49. Laura Ladd (Ladd) provides management consulting and advisory services in the area of real estate development and energy development. Ladd was hired by NLRP to review socioeconomic analysis in the Application. Ladd prepared a five page summary letter of her analysis and findings. Ladd's comments focused on Chapter 5.3 Construction and Workforce Estimates and Chapter 5.4.8 Fiscal Analysis. According to Ladd, her primary concern was that the Applicant's projected labor costs of \$9.1 million and projection of 168 and 145 workers at the peak construction, was too aggressive. Ladd opined that based upon other wind projects in the area and the E3 Wind Costing Tool, the workforce at peak construction was closer to 110 construction workers. If the total workforce is reduced by 30 percent, it will impact the assumptions in the Application regarding payroll, lodging, gas, sales and use taxes, per diem and travel expenditures. Ladd believed the projections in the Application were "best case scenario" assumptions, which was reasonable, but a downward adjustment of 20 to 30 percent was more likely to occur. Ladd admitted that regardless of the downward adjustment, the communities of

Converse County would see an increase in ad valorem taxes, sales taxes, lodging taxes and local employment if the Project is permitted. Ladd also admitted that her figures for workforce came from estimates in three other wind farm applications and were not based on actual numbers. Ladd additionally admitted that the Applicant underestimated the ad valorem taxes which would offset any overestimates made in the Application. *Tr. of Proc.*, pp. 678- 728; *NLRF's Exhibit 49*.

50. Grady Gaubert (Gaubert) resides in Louisiana and owns property in the Northern Laramie Range near the proposed Projects. Gaubert bought one parcel from Rick Grant and was informed at the time he purchased the parcel there was a possibility that some turbines would be located on Rick Grants land near the parcel Gaubert purchased. Gaubert uses his land for hunting, cattle grazing and haying. Gaubert plans to build a small cabin on his property sometime in 2012, depending on the number of turbines he can see from his property. According to Gaubert, although he owns two parcels affected by the Projects, no one from Wasatch Wind has spoken to him and he does not show up on Wasatch Wind's exhibits as an adjacent landowner. Gaubert was opposed to the Projects stating his belief that his property value and view shed would be affected by wind turbines. Gaubert admitted, however, that he purchased both of his parcels with the knowledge for the potential for wind development in the area. Gaubert also admitted that he received communication in the mail from Wasatch Wind describing the general description of the Projects, the location of the turbines, the transportation routes and the construction schedule. Gaubert also admitted that the mailing invited him to contact two separate people at Wasatch Wind if he wanted to further discuss the information. *Tr. of Proc.*, pp. 733-777.

51. Hamilton Smith (Smith) is a senior ecologist with Biota Research Consulting, an environmental firm based out of Jackson, Wyoming. Smith was hired by NLRF to provide a

review of the section of Wasatch Wind's Application titled *Preliminary Wildlife Survey Report* by SWCA. Smith reviewed the Application, the protocols in Appendix H, a letter from Game and Fish, the revised turbine layout, relevant scientific literature, the transcript of the testimony of Spencer Martin and Mary Flanderka of the Game and Fish Department. After reviewing the above noted information, Smith was concerned with the study methodology used to identify the movement of animals across the landscape. According to Smith, the raptor monitoring stations were 2.6 miles apart and should have been 1.3 miles apart and the study area was not large enough. Smith was of the opinion that Condition #16 recommended by the Division requiring two years of wildlife surveys was insufficient to address his concerns regarding the raptor avoidance areas identified in the Application. According to Smith, it was not possible to determine that the proposed facility would not pose a threat of serious injury to the biological resources in the area. *Tr. of Proc., pp. 790-830; NLRF Exhibit 50.*

52. Real estate appraiser, Kurt Kielisch, from Wisconsin was engaged by NLRF to assess the impact of the Projects on the surrounding property values. Kielisch prepared a 50-page Property Value Impact Report identified as *NLRF Exhibit 51*, on April 4, 2011. Kielisch did not appraise any of the properties affected by the proposed Projects but was hired as a consultant. At the time he prepared his written report, Kielisch was not licensed as an appraiser in the State of Wyoming, but had received that certification by the time he testified at the contested case hearing. *Tr. of Proc., pp. 832-841.*

53. Kielisch reviewed the Application and revised turbine layout, visited the area and surveyed 11 individuals including four realtors, four appraiser and three landowners near the Projects boundaries. All individuals interviewed were referred by NLRF and its members. Kielisch did not interview anyone who supported the Projects, and in fact, three of the 11 were

parties to the proceedings. Of the eight remaining individuals, one was unfamiliar with the area, and three had never bought or sold properties in the area. Kielisch also prepared a power point presentation for the Council. According to Kielisch, perception drives all buying decisions in real estate. Kielisch measured perception by reviewing the literature to see what the media is saying about the effects of wind turbines on property values. Concerns expressed included conservation and wildlife, view shed, flicker effects, soil and water contamination, effects on hunting and tourism. Kielisch concluded from the survey of the 11 individuals that the impact would change the highest and best use of the property from recreational to agricultural for a potential loss of between 40 to 71 percent of the property value. Kielisch described the land use of area of the proposed Projects as smaller working ranches under 5,000 acres. In reality, in the vicinity of the Projects, most ranches were larger than 5,000 acres. For instance, True Ranches own over 27,400 acres, Turtle Rock Ranch owns over 13,000 acres, Sno-Shoe Ranch owns over 12,000 acres and Rick Grant owns over 5,200 acres. *Tr. of Proc., pp. 841-851; NLRF's Exhibits 51 and 51PP.*

54. Scott Lieske (Lieske) testified as a research scientist at the University of Wyoming. Lieske researches land planning and development from the perspective of geographic information science, using computer aided mapping tools. Lieske was assigned by NLRF to present a view shed analysis of the Projects. Lieske took issue with the Applicant's view shed buffer zone at 10 miles, which included the Town of Glenrock. According to Lieske, the radius should have been a 20 mile view shed analysis. Lieske had no knowledge that the University of Wyoming was asked to comment on the Projects and had no recommendations regarding approval of or conditioning the Permit. The Council finds that Lieske's testimony was not particularly helpful to the issues presented in this case. *Tr. of Proc., pp. 941-967.*

55. The final witness testifying on behalf of NLRP was Kenneth Lay (Lay), a member of NLRA and adjoining landowner to the Projects. Lay resides in Washington D.C., and spends five to six weeks each year at his property located on Box Elder Road. According to Lay, NLRA was formed as a non-profit organization in late 2008 or early 2009 as a result of Rocky Mountain Power considering installing transmission lines across the Northern Laramie Range and Wasatch Wind's application to lease 40,000 acres of state lands. Lay expressed his concern, and that of NLRA, that the recreational use of the area surrounding the proposed Projects would be greatly diminished. Lay owns 1,560 acres of deeded land known as White Creek Ranch which he purchased in 1992 and which borders Rick Grant's ranch to the west. Lay took a series of pictures depicted in *NLRP Exhibits 27 through 29*. As of April 7, 2011, Lay's property is on the National Register of Historic Places. *Tr. of Proc.*, pp. 972-997.

56. In Lay's opinion, the Projects pose a serious threat of injury to the surrounding inhabitants because the air quality will deteriorate due to a quarry 3 miles upwind from his ranch, a decline in property values and a negative impact to the hunting and fishing in the area. Lay was also concerned that the Projects would be the first step toward further industrialization in the area. Lay confirmed that NLRA sought to put zoning rules and regulations in place and the Converse County Commissioners voted it down. Lay admitted the Duncan Ranch, located on the state lands which were initially part of the Application, has a management plan that includes wind development. Lay also admitted that NLRA has been actively involved in trying to stop the Projects by letters to the editor, NLRA's website, communications with elected officials and repeated letters to investors to attempt to get the investors to stop funding Wasatch Wind. The letters accused Wasatch of violating federal securities laws and Lay filed a complaint with the Securities and Exchange Commission which took no action. It was Lay's opinion that the two

facilities were not qualifying facilities under the law, that the facilities would pose a threat of serious injury to the environment and social and economic conditions of the inhabitants, impair the health, safety and welfare of the inhabitants and has failed to show the financial resources to construct, maintain, operate and decommission the facility. *Tr. of Proc.*, pp. 998-1029.

57. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

## **V. CONCLUSIONS OF LAW**

### **A. Principles of Law**

58. Wasatch Wind bears the burden of proof in the proceedings herein. "The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof." *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyoming Mental Health Prof. Licensing Board*, 120 P.3d 152, (Wyo. 2005).

59. Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2010) provides that an application for a permit shall be filed with the Division and contain the following information:

(i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;

(ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;

(iii) A description of the nature and location of the facility;

(iv) Estimated time of commencement of construction and construction time;

(v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;

(vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;

(vii) A statement of why the proposed location was selected;

(viii) A copy of any studies which may have been made of the environmental impact of the facility;

(ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;

(x) Inventory of estimated emissions and proposed methods of control;

(xi) Inventory of estimated solid wastes and proposed disposal program;

(xii) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;

(xiii) An evaluation of potential impacts together with any plans and proposals for alleviating social and economic impacts upon local governments or special districts and alleviating environmental impacts which may result from the proposed facility. The evaluations, plans and proposals shall cover the following:

(A) Scenic resources;

(B) Recreational resources;

(C) Archaeological and historical resources;

(D) Land use patterns;

(E) Economic base;

- (F) Housing;
- (G) Transportation;
- (H) Sewer and water facilities;
- (J) Solid waste facilities;
- (K) Police and fire facilities;
- (M) Educational facilities;
- (N) Health and hospital facilities;
- (O) Water supply;
- (P) Other relevant areas
- (Q) Agricultural;
- (R) Terrestrial and aquatic wildlife;
- (S) Threatened, endangered and rare species and other species of concern identified in the state wildlife action plan as prepared by the Wyoming game and fish department.

- (xiv) Estimated construction cost of the facility;
- (xv) What other local, state or federal permits and approvals are required;
- (xvi) Compatibility of the facility with state or local land use plans, if any;
- (xvii) Any other information the applicant considers relevant or required by council rule or regulation;
- (xviii) A description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility;
- (xix) Certification that the governing bodies of all local governments which will be primarily affected by the proposed facility were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xx) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years, and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xxi) Information demonstrating the applicant's financial capability to construct, maintain, operate, decommission and reclaim the facility.

60. Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2010) requires that the division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(i) Wyoming department of transportation;

(ii) Public service commission;

\* \* \*

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

\* \* \*

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

\* \* \*

\* \* \*

(xiv) The University of Wyoming;

- (xv) Department of revenue;
- (xvi) The Wyoming business council
- (xvii) Department of workforce services;
- (xviii) Office of state lands and investments;
- (xix) Department of employment;
- (xx) Department of state parks and cultural resources;
- (xxi) Department of fire prevention and electrical safety;
- (xxii) Department of family services;
- (xxiii) Oil and gas conservation commission.

61. Wyo. Stat. Ann. § 35-12-110(c) (LEXIS 2010) provides the information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefore, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

62. Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2010) provides that upon receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations. If the director determines that the application is incomplete, he shall within thirty (30) days of receipt of the

application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

63. Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2010) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

64. Pursuant to Wyo. Stat. Ann. § 35-12-111 (a) (LEXIS 2010), the parties to a permit proceeding include:

(i) The applicant;

(ii) Each local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i) and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

(b) Any party identified in paragraph (a)(iii) of this section waives his right to be a party if he does not participate orally at the hearing. Any party identified in paragraph (a)(ii) of this section waives its right to be a party unless the local government files a notice of intent to be a party with the office not less than twenty (20) days before the date set for the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

(d) No state agency other than the industrial siting division shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the industrial siting division or any party.

(e) Any person described in W.S. 35-12-111(a)(ii) or (iii) who participated in the public hearing under W.S. 35-12-107 may obtain judicial review of a council decision waiving all or part of the application requirements of this chapter.

65. Pursuant to Wyo. Stat. Ann. § 35-12-113 (LEXIS 2010), the council shall:

(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b), unless the other regulatory agency requests that conditions be imposed. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

(i) The proposed facility complies with all applicable law;

(ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area;

(iii) The facility will not substantially impair the health, safety or welfare of the inhabitants

(iv) The applicant has the financial resources to construct, maintain, operate, decommission and reclaim the facility.

(b) No permit shall be granted if the application is incomplete.

(c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.

(e) A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.

(f) Within ten (10) days from the date of the council's decision, a copy of the findings and the council's decision shall be served upon the applicant, parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

66. The Industrial Development Information and Siting Rules and Regulations, Chapter 1

provide:

**Section 9. Application information to be submitted.**

In accordance with W.S. 35-12-109, the application shall contain the information required by the act with respect to both the construction period and online life of

the proposed industrial facility and the following information the council determines necessary:

(a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components;

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components of the proposed industrial facility such as boilers, steam generators, turbine generators, cooling facilities, production equipment, and dependent components.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands;

(ii) Products needed by facility operations and their source.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and the local governments primarily affected by the proposed industrial facility as defined in sections 2(b) and (c), respectively, of these regulations. The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) The estimated number of employees needed to complete the construction and operation of the facility by the applicant, its contractors and subcontractors to include job classifications by calendar quarter. The estimate should also include:

(i) Seasonal fluctuations and the peak employment during both construction and operation;

(ii) Annual payroll;

(iii) Expected benefits, if any, to be provided including housing allowances, transportation allowances, and per diem allowances.

(i) An evaluation of the social and economic conditions in the area of site influence. The social and economic conditions shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation may include, but is not limited to:

(i) Land use designation of the site location, including whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

- (A) Employment projections by major sector;
- (B) Economic bases and economic trends of the local economy;
- (C) Estimates of basic versus non-basic employment;
- (D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). An analysis of effects on transportation facilities including effects on service levels of roads, haul routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

- (A) Facilities required for the administrative functions of government;
- (B) Sewer and water distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and services;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of user-oriented community recreational facilities and programs and urban outdoor recreational opportunities including descriptions of recreational resources, locations of the recreational resources, and the types of recreational resources and an analysis of outdoor, resource-oriented recreational opportunities including locations and types of the recreational resources;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the industrial facility subject to sales and use taxes and expected payments by quarter for the construction period. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county. The estimate will also include projections of the impact assistance payments available under W.S. 39-6-411(c) and W.S. 39-6-512(d) generated by the proposed industrial facility through the sales and use tax payments;

(B) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts. The items shall be noted and evaluated as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the proposed facility, including:

(i) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;

(ii) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

67. Wyo. Stat. Ann. § 18-5-502 (LEXIS 2010) provides further guidance in the regulation of wind energy projects including in relevant part:

(a) It is unlawful to locate, erect, construct, reconstruct or enlarge a wind energy facility without first obtaining a permit from the board of county commissioners in the county in which the facility is located.

\* \* \*

(c) No wind energy facility constructed or being constructed prior to July 1, 2010 shall be required to have the permit required by this section. No wind energy facility for which an application for a permit has been made to the industrial siting council, or that has received findings of fact, conclusions of law and an order from the industrial siting council, prior to July 1, 2010 shall be required to have the permit required by this section.

#### B. Application of Principles of Law

68. This Council has considered all the evidence and testimony presented at the May 16, 17 and 18, 2011 and June 13, 2011, evidentiary hearing.

69. Through the evidence and testimony of Mikell and Stevens, the Applicant has proved, by a preponderance of the evidence, it has met the notification requirements in the statute. The statutes do not require personal notification. The Wasatch Wind developers also conducted several meetings with the local residents to discuss concerns and mitigate impacts. The Hornung's had an opportunity to participate at the meetings and contact Wasatch Wind. Wasatch Wind complied with all notification requirements in this matter. With the proposed

conditions reflected in this Order, this Council finds Wasatch Wind has shown, by a preponderance of the evidence, that it filed a completed Application with the Division regarding the 62 wind turbines to be constructed in two phases, and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2010) and Chapter 1, Section 9 of the Rules and Regulations and that the proposed Projects comply with all applicable law.

70. Wasatch Wind has shown, through testimony and exhibits, that the proposed Projects will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area. The testimony of Martin, the Game and Fish representatives, Blankenship, Zingerman, Hessler and Hilston all indicate this is the case. As further explained below, although there was some testimony to the contrary, that testimony was based upon personal feelings and thus did not persuade the Council on these points. For instance, the Council finds Gaubert's testimony in opposition to the Projects was not particularly compelling in light of his admission that he purchased his property with the knowledge that wind farm development on adjacent property was likely.

71. The concerns expressed by Hornung and the NLRF have been strongly considered by this Council. The Council finds the testimony of Hessler was compelling regarding the lack of noise effect on the Hornung's and others in the area of the turbines. To address the Hornung's view shed objections, this Council will impose a condition requiring Wasatch Wind to negotiate with Hornung, in good faith, to mitigate the visual and audio impacts, such as use of vegetative screening, as reflected in Condition #20. Additionally, although the Council recognizes the Project may visually impact the Hornung's, the Projects need not eliminate all impacts in order for the Projects to be in compliance with the statutes. The Wyoming Supreme Court has addressed the issue and held that, "An examination of the factors included makes manifest the

proposition that the Industrial Siting Council is to be concerned with the collective not individual welfare of the present and expected inhabitants.” *Laramie River Conservation Council v. Industrial Siting Council*, 588 P.2d 1241, 1253 (Wyo. 1978). Considering the collective, not individual, welfare of the present and expected inhabitants, the Council concludes that the Projects will not result in a substantial impairment of health, safety or welfare of the present or proposed inhabitants of the areas of site influence.

72. The Council further finds it was more persuaded by the testimony of Hilston over the testimony of Kielisch regarding the effect of the wind farm on property values. Hilston was familiar with the unique characteristics of the residents of Wyoming and the area surrounding the Projects. Kielisch’s report was based upon information from areas distant to Wyoming.

73. Flanderka’s testimony is given more weight than Smith’s testimony regarding the impact to the biological and wildlife resources in the area. Smith is employed by Biota Research Consulting. The Council rejects Smith’s opinion in favor of Flanderka’s testimony which was favorable for the Applicant. The Council also disagrees with Martin’s opinion regarding the two year data collection prior to commencing construction and will require two years of data collection as recommended by the Wyoming Game and Fish Department. It would be difficult, if not impossible, to mitigate damage to wildlife habitat after it has occurred. The Council, through Permit Condition #16, will authorize the Director to allow Wasatch Wind to begin improvements to Mormon Canyon Road, at its own risk.

74. Through the testimony of all its witnesses, as well as its Application and the exhibits submitted, Wasatch Wind has demonstrated the proposed Projects will not substantially impair the health, safety or welfare of the inhabitants. Ladd’s socioeconomic analysis and 30 percent downward adjustment of Wasatch Wind’s projected workforce is rejected by this

Council. Ladd's opinion was based upon figures from other nearby wind farm applications rather than based upon actual numbers from those projects. Additionally, Ladd admitted that, even if her figures were used, the communities of Converse County would benefit socioeconomically. Additionally, Blankenship's testimony is found to be compelling in Wasatch Wind meeting its burden of proof that the Projects will not pose a threat of serious injury to the social or economic condition or inhabitants of the affected area. Blankenship's socioeconomic analysis was based upon actual monitoring reports received from recently permitted wind energy projects in the vicinity.

75. Finally, this Council notes that Wasatch Wind did not attempt to establish its own financial resources to demonstrate its ability to construct, maintain, operate, decommission and reclaim the facility. Rather, the Applicant relied upon Edison Mission Wind's financial capability to satisfy the financial assurance requirement of Wyo. Stat. Ann. §35-12-113(a)(iv). This Council is aware that Edison Mission Wind is not contractually bound to exercise its option to purchase the Projects. The Council is further aware that these types of financing arrangements are standard in the industry. Nevertheless, considering the testimony of Bhasin, this Council finds that further assurance of financial capability must be provided before construction can begin so that the Council is assured that Wasatch Wind has actually obtained sufficient assurances of financial resources. Therefore, the Council finds it necessary to impose Special Permit Condition #19 which requires sufficient financial assurances prior to construction.

76. With regard to the allocation of the impact assistance funds, this Council finds the testimony of Converse County Commissioner Willox and Glenrock Mayor Mueller, to be compelling. Converse County presented evidence of the impact the Projects will have on its

communities, especially in light of the Project's location. Natrona County presented no evidence to support its request for the impact assistance as recommended by the Division.

### DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2010), this Council hereby **grants** the Industrial Siting Permit Application filed by Wasatch Wind Intermountain, LLC, doing business as Pioneer Wind Park I, LLC and Pioneer Wind Park II, LLC to construct and operate a two phase wind energy generation project consisting of 62 wind turbines to be located near the Town of Glenrock, Wyoming in Converse County, Wyoming.

The Council specifically finds, with the imposition of the following conditions, that:

- (1) The proposed facility complies with all applicable law;
- (2) The Facility will not pose a threat of serious injury to the environment nor to the social or economic condition of inhabitants or expected inhabitants of the affected area;
- (3) The Facility will not substantially impair the health, safety or welfare of the inhabitants;
- (4) The Applicant has the financial resources to construct, maintain, operate, decommission and reclaim the facility.

Pursuant to its authority, this Council allocates the impact assistance funds as follows:

Converse County, Wyoming: 67%

Natrona County, Wyoming: 33%

Finally, pursuant to its authority, this Council places the following terms and conditions on the facility as modified from *State's Exhibits 1, 2 and 4*:

**Condition #1.** Wasatch Wind Intermountain, LLC, doing business as Pioneer Wind Park I, LLC and Pioneer Wind Park II, LLC (Permittee) shall obtain and maintain all required State and local permits and approvals in accordance with W.S. 35-12-109(a)(xv), 35-12-113(a) (i) and 35-12-115 during the term of this permit.

**Condition #2.** Construction must commence within three years following the date of the award of this permit.

**Condition #3.** Before engaging in any activity over which the Industrial Siting Council (ISC) has jurisdiction which could significantly affect the environment external to Permittee's permit area, or the social, or economic, or environmental conditions of the area of site influence and which was not evaluated in the permit process, the Permittee shall prepare and file an evaluation of such activity with the Industrial Siting Division (ISD). When in the opinion of the Director of the Department of Environmental Quality (Director), the evaluation indicates that such activity may result in significant adverse impacts that were not considered in the permit the Permittee shall file a permit amendment in accordance with W. S. 35-12-106.

**Condition #4.** The Permittee shall develop a written compliance plan and program to ensure compliance with voluntary commitments of this Permit, testimony, agreements with local governments, and these permit conditions. A compliance coordinator shall be designated and identified to the ISD prior to the onset of construction. This individual shall present himself/herself and meet with the ISD staff before construction commences and review the permit requirements with the ISD staff. This coordinator shall assume the responsibility for assuring that contractors and subcontractors are aware of and enable the Permittee to meet all permit requirements.

**Condition #5.** The ISC may review any adverse social, economic, or environmental impacts either within or outside the area primarily affected that are attributed to the Permittee:

- a. Which adversely affect the current level of facilities or services provided by the local community;
- b. Which cannot be alleviated by financing through ordinary sources of revenue, given due consideration to bonding history and capacity of the jurisdiction involved;
- c. Which were not evaluated or foreseen at the time the permit was granted and can be attributed in whole or in part to the permitted facility; and
- d. Which are not or cannot be resolved by voluntary measures by industrial representatives in the community,

Then by order issued in accordance with the Wyoming Administrative Procedures Act, the ISC may require additional mitigation by the Permittee in cooperation with other basic industries (existing and future) provided that:

- a. A local government has requested mitigation assistance; and
- b. Such adverse impacts were determined to be a result of the activities of the Permittee.

Permittee shall be required to assist in mitigating any impacts that result from construction or operation of the Pioneer Wind Park I and Pioneer Wind Park II Wind Energy Projects, including those resulting from direct and indirect employment. For purposes of determining additional mitigation measures by the Permittee, consideration shall be given to previous mitigation efforts. However, in any event, Permittee shall not be required to provide mitigation in excess of the proportion that the Permittee's activities are contributing to the total impacts within the impacted area (as defined by W. S. 35-12-102).

**Condition #6.** The Permittee shall give written notice to the ISD when construction commences.

**Condition #7.** The Permittee shall give written notice to the ISD when the physical components of each phase of the Facility are 90 percent complete.

**Condition #8.** As a means of adhering to W. S. 35-12-109 (a) (xviii) to provide preference for local and resident hiring, the Permittee, contractors and subcontractors shall follow these hiring guidelines:

- a. Procedures to foster local hiring shall be incorporated into the compliance plan.
- b. Job postings shall be filed with the local Workforce Center.

**Condition #9.** The Permittee shall submit an annual report to ISC for the years or portion of a year that includes construction and again for the first year of operation of the facility for each phase. The annual report shall include:

- a. Efforts to assure compliance with voluntary commitments, mitigation agreements with local governments, and conditions contained in this permit;
- b. The extent to which construction has been completed in accordance with the approved schedule;
- c. Any revised time schedules or time tables for construction, operations, and reclamation, and a brief summary of the construction, reclamation, and other activities that will occur in the next one-year period; and
- d. Demonstration of compliance with permit conditions.

**Condition #10.** In order that the ISD may monitor Permittee's performance, the Permittee shall institute the following monitoring program that shall be recorded on a monthly basis and reported to the ISD on a quarterly basis through the construction period of each phase. Monthly data will be in a form prescribed by ISD and shall include:

- a. The average and peak number of employees for the Permittee, contractors and subcontractors.
- b. Employee city and state of residency at the time of hire and the employee city and state while employed and type of residence while employed.
- c. The number of new students enrolled by grade level and school district who are related to Permittee employees, identified as either local (no change of residence) and in-migrants.
- d. Wyoming resident versus non-resident mix of workforce.
- e. An updated construction schedule in the form of Table 3-1 and Table 3-2 as shown on page 3-2 and 3-3 of the *Section 109 Wasatch Wind Intermountain, LLC Permit Application Pioneer Wind Park I and Pioneer Wind Park II Project* (Application).

**Condition #11.** The Permittee shall notify the ISD in advance of proposed changes to the scope, purpose, size or schedule of the Facility. The Director may authorize such changes if he or she finds that:

- a. The change should not result in any significant adverse environmental, social, and economic impacts in the area of site influence; and
- b. No party nor Council Member has requested that the matter be heard before the Council in accordance with the permit procedures of W. S. 35-12-106 (c) (d).

The Director will provide public notice of the proposed change and his intent to approve the request.

**Condition #12.** The Permittee will notify the ISD in advance and provide updates to the On Site Construction Workforce Schedule, Table 3-3 on page 3-5 of the Application, and all other pages of the Application where changes are expected to occur if:

- a. Actual on-site workforce during construction is expected to exceed the peak number estimated in the Application by more than fifteen percent (15%);
- b. The Permittee wishes to make changes to the lodging plan as described in the Application.

The Director may authorize such changes or refer the matter to the Siting Council.

**Condition #13.** As may be subsequently required by the Director, the Permittee shall pay a fee based on the estimated costs to prepare, schedule, and conduct a special hearing or meeting of the Council to remedy any action or inaction by the Permittee. Unused fees shall be refunded to the Permittee.

**Condition #14.** When the Project is nearing completion, Permittee shall place notice to that effect in the newspapers in the general area of the Facility.

**Condition #15.** Before the start of construction Permittee shall provide a surety bond or similar security acceptable to the Administrator in the amount of \$18,767,000.00 for decommissioning and reclamation as called for by W.S. 35-12-109(a)(xx) and the Rules of the Council. The Permittee shall update the decommissioning and reclamation plan and bond every five years and submit both to the Director for review and approval.

**Special Condition #16.** Before the start of construction of each segment of construction – Pioneer Wind Park I and Pioneer Wind Park II – Permittee shall provide the second year survey of wildlife to ISD. The Director may authorize the start of construction of the segment on a favorable recommendation by the Wyoming Game and Fish Department. Notwithstanding the above, the Director may authorize the Permittee, at its own risk, to begin making improvements to Mormon Canyon Road.

**Special Condition #17.** Before the start of construction the Permittee shall provide evidence of training, orientation, and agreement on response actions to the Facility to personnel of adjacent fire districts. It will include fire prevention, fire suppression, emergency rescue and the respective responsibilities of the Permittee and the district(s). The Director may authorize the start of construction on favorable recommendation by the State Fire Marshall.

**Special Condition #18.** Prior to the start of construction of any segment of the Facility and no later than 30 days after the Decision of the Council, the Permittee shall provide a Class III Cultural Survey to the Director of those areas indicated on Replacement Page F-10R. The Survey will be prepared by a person whose qualifications are acceptable to the Director. If the Survey report requires protection according to Federal law, then the Survey will be sealed by the Permittee and an additional redacted version will be prepared and both provided to the Director. The Director will refer the Survey to the Historic Preservation Officer for an evaluation. No later than 30 days from the referral to the Officer the Director may authorize the start of construction or refer the matter to the Council.

**Special Condition #19.** Prior to the start of construction, Permittee shall provide evidence acceptable to the Council, upon recommendation of the Industrial Siting Division, that the Permittee has obtained sufficient financial resources to construct, maintain, operate,

decommission and reclaim the facility. If sufficient financial resources are not obtained within two years, the Permit shall expire.

**Special Condition #20.** Upon opponent landowner agreement, the Applicant will negotiate in good faith, mitigation for visual and potential audio impacts of Pioneer Wind Projects I and II, such as but not limited to vegetative screening.

**Special Condition #21.** FFA approval for remote control night lighting of wind generating towers will be sought and installed within six months of FFA approval.

### **ORDER**

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application known as Wasatch Wind Intermountain, LLC, doing business as Pioneer Wind Park I, LLC and Pioneer Wind Park II, LLC, as submitted by the Applicant and modified by this Council as set forth above in Permit Conditions #1 through #21 is granted.

DONE this \_\_18\_\_ day of July, 2011.

\_\_\_\_\_/s/\_\_\_\_\_  
Shawn Warner, Chairman  
Industrial Siting Council  
Herschler Building, Fourth Floor West  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002  
(307) 777-7170

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division ATTN: Tom Schroeder and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the \_\_21\_\_ day of July, 2011, addressed to the following:

Office of Administrative Hearings  
2020 Carey Ave, 5<sup>th</sup> Floor  
Cheyenne, Wyoming 82002

Luke Esch - Attorney for Industrial Siting Division  
Assistant Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002

Bridget Hill – Attorney for Board  
Assistant Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002

Brent Kunz, Esq - Attorney for Applicant  
Hathaway and Kunz  
2515 Warren Avenue, Suite 500  
Cheyenne, Wyoming 82001

John A. Masterson – Attorney for Applicant  
Rothgerber Johnson and Lyons, LLP  
123 West 1<sup>st</sup> Street, Suite 200  
Casper, Wyoming 82601

F. Scott Peasley – Attorney for Town of Rolling Hills  
Peasley Law Office  
119 South Third Street  
Douglas, Wyoming 82633

Quentin Richardson – Attorney for Converse County  
107 North 5<sup>th</sup> Street, Suite 140  
Douglas, Wyoming 82633

Peter Nicolaysen – Attorney for Northern Laramie Range Foundation and  
Attorney for Northern Laramie Range Alliance  
Nicolaysen & Associates, PC  
P.O. Box 7  
Casper, Wyoming 82602-0007

Bill Knight, Esq – Attorney for Natrona County Commissioners  
County Attorney  
Natrona County  
200 North Center #115  
Casper, Wyoming 82601

Lynnette J. Boomgaarden – Attorney for Grant Ranch  
Schultz and Belcher, LLP  
237 Storey Boulevard, Suite 110  
Cheyenne, Wyoming 82009

David L. True – Member of True Ranches, LLC  
P.O. Drawer 2360  
Casper, Wyoming 82602

Alexander K. Davison – Attorney for Chester and Jennifer Hornung  
Patton and Davison  
P.O. Box 945  
Cheyenne, Wyoming 82003

\_\_\_\_\_/s/\_\_\_\_\_  
Industrial Siting Division