

PROGRESS REPORT

January 11, 2005

**TO: Commissioner Huston
Commissioner Bowen
Commissioner Crankovich**

CC: Darryl Piercy and Jim Hurson

FROM: David Steeb, Director, Desert Claim Wind Power LLC

RE: Desert Claim Wind Power Project/Development Agreement

On December 27, 2004, the Board of County Commissioners instructed us to prepare and present a progress report regarding a number of issues in the draft Development Agreement for the Desert Claim Wind Power Project. The following is the list of items we are addressing in this progress report:

- First, we were asked to obtain certain other agreements referred to in the draft Development Agreement, or explain why requirements for such agreements should be deleted from the Development Agreement. An example of such an agreement would be a fire service contract with Kittitas County Fire District No. 2.
- Second, we were asked to edit the Development Agreement to refer to either the Board of County Commissioners or the Director of Community Development Services as the sole County decision makers.
- Third, we were asked to respond to questions about the County's definition of "Wind Farm" under Kittitas County Code Chapter 17.61A and its applicability to the Desert Claim Project.

- Fourth, we were asked to better define the trigger for Project decommissioning.
- Fifth, we were asked to edit the Development Agreement to avoid suggesting County responsibility for state or federal agency approvals also required for the Project. An example of this would be FAA approval of a Turbine lighting plan.
- And last, we were asked to come back to this Board with a proposal for a workable Turbine buffer.

This report responds to the Board's instructions and discusses our progress in negotiating a Fire Services Agreement with Kittitas County Fire District No. 2; our progress in negotiating a Franchise Agreement with Kittitas County; our proposals for editing the Development Agreement pursuant to your instructions; and our proposed turbine buffer.

1. Agreements.

a. Fire Services Agreement. We have made substantial progress on this issue since December 27, 2004. On Friday, January 7, 2005, I met with Fire Chief Stan Baker of Kittitas County Fire District No. 2. This was the first date on which we could meet with Chief Baker following the holidays. At that meeting, we discussed specific terms and conditions for a Fire Services Agreement with Chief Baker.

I met again with Chief Baker this morning, January 11, 2005, to present a draft Fire Services Agreement. A copy of our draft is attached as Exhibit A to this Progress Report. We understand the next meeting of the District 2 Board is on January 17, 2005.

We expect to obtain a signed agreement by February 11, 2005. Once we do, we will present it to the Board of County Commissioners.

b. Franchise Agreement. As you know, Desert Claim intends to obtain a Franchise Agreement from the County in order to locate portions of our power collection and project control system in County rights-of-way.

On January 7, 2005, I met with Public Works Director Paul Bennett to discuss this issue. Again, that was the earliest time we could meet with him due to Mr. Bennett's vacation schedule. At that time, I gave Mr. Bennett a draft Franchise Agreement modeled on one provided by the county. A copy is attached as Exhibit B to this Progress Report.

We understand that Mr. Bennett and other County staff are reviewing our draft. We will be meeting again with Mr. Bennett on in the next two weeks. We expect to obtain a signed agreement by February 11, 2005. Once we do, we will present it to this Board.

c. Construction Traffic Management Plan. We have also discussed with Mr. Bennett the terms and scope of a construction traffic management plan, a draft of which is attached to this Progress Report as Exhibit C. Although Mr. Bennett anticipates that this draft plan will be updated and revised at the time the County reviews Final Construction Plans, he has indicated general agreement with the terms set forth in the attached draft that came from the Development Agreement.

2. Edited Development Agreement.

a. "Wind Farm" Definition. Beginning with the Planning Commission hearing on our application, and continuing with the Board's deliberations last month,

questions have been raised regarding whether the Desert Claim Project is really a “Wind Farm” under Kittitas County Code Chapter 17.61A. We believe the Desert Claim Project meets the County’s definition of a “Wind Farm” and that is why the County has been processing our application for nearly two years under your wind farm ordinance.

There is also testimony in the record from your Director of Community Development Services on this issue. Mr. Piercy explained that even if the separate land holdings aggregated within the Project Area were defined as individual “Wind Farms,” overall the Desert Claim project still complies with the County’s Wind Farm ordinance processing requirements.

This is because we filed one consolidated application using the County’s Development Activities Application form – just like any other applicant who needs more than one permit. So there was no defect in our application.

Also, the County conducted one, consolidated environmental review for the Project, as required by the SEPA Rules. (The specific citation is WAC 197-11-060(3)(b)). So there was no defect in the County’s EIS – which, by the way, wasn’t even appealed.

Finally, both state law and the County’s development agreement ordinance authorize the Board of County Commissioners to enter into one consolidated Development Agreement for the Project.

We agree with the Director. Nothing in the “Wind Farm” definition prevents the County from issuing one consolidated Wind Farm Resource Development Permit – or, if you prefer, eight individual permits, one for each landowner’s property. Nothing in the “Wind Farm” definition prevents you from adopting a consolidated set of site-specific

amendments to the County's Comprehensive Plan land use designation map. And nothing in the "Wind Farm" definition prevents you from enacting an ordinance imposing Wind Farm Resource Overlay zoning on the lands within the Project Area.

We revised the Development Agreement to include this explanation. It is in Recital J. A copy is attached to this Progress Report as Exhibit D.

We also revised the definition of "Substation" in Section 2.25 to respond to comments that we need a Conditional Use Permit for the Project substation. We believe those comments are incorrect because they fail to recognize the County's specific wind farm regulations in Chapter 17.61A.

The Desert Claim Project does not require a Conditional Use Permit because the substation, included in our Project Area, clearly falls within the category of "any other buildings, support structures or other related improvements necessary for the generation of electric power." Thus, under section 17.61A.020 of the County's zoning code, our Project substation is included in the definition of "Wind Turbine" and "Wind Farm."

This was part of the dramatic change in the regulations applicable to wind farms that the County enacted in 2002. The old definition of "wind turbine" in the County's utilities ordinance specifically said that the term "wind turbine" does NOT include "electrical distribution or transmission lines, or electrical substations otherwise regulated by this chapter." But the County's 2002 wind farm ordinance does not exclude substations. This was deliberate. It was done with the intent of providing an inclusive and comprehensive permitting process for wind farms, with authority for the

decision lodged in the Board of County Commissioners (rather than the unelected Board of Adjustment).

A copy of proposed Section 2.25 of the draft Development Agreement, setting forth the definition of "Project Substation," is attached to this Progress Report as Exhibit E.

b. Decommissioning Fund Amount and Trigger. We heard comments regarding the amount of decommissioning funds proposed in the Development Agreement and the timing for decommissioning.

We worked with Public Works Director Paul Bennett to establish the amount of the decommissioning funds required for our Project. As part of that process, we proposed to increase the amount of the decommissioning funds to \$33,000 per Turbine, or a maximum total of \$3,946,000. We believe this amount is consistent with Mr. Bennett's directions to us.

In response to comments regarding the timing or "trigger" for decommissioning, we are proposing a change to Section 5.11 of the draft Development Agreement. Instead of saying the Project or any Turbine within the Project will be decommissioned if it stops producing electricity, we are proposing that the Project or any Turbine within the Project will be decommissioned if it does not operate for at least 250 hours in any consecutive 12 month period.

We revised Section 5.11 to incorporate these proposed changes; a copy is attached to this Progress Report as Exhibit F.

c. Other Agency Approvals. The Board directed us to eliminate from the Development Agreement any reference to approvals required for the Project that we

must obtain from state or federal agencies instead of the County. A list of these state and federal approvals required for the Project is attached as Exhibit G to this Progress Report.

To respond to the Board's instruction, we are proposing two changes to the Development Agreement. First, we are proposing to add a new subsection to Section 5 of the Development Agreement stating that Desert Claim must obtain all state and federal permits and approvals required for the Project. This would be subsection 5.17. A copy of this section is attached to this Progress Report as Exhibit H.

Second, we are proposing to delete from the Development Agreement all of the references to state and federal approvals required for the Project. The proposed changes are included in Exhibit I attached to this Progress Report.

3. Turbine Buffer Alternatives

During the hearing on December 27, 2004, the Board instructed us to return on January 11, 2005 with a reasonable and feasible Turbine buffer proposal. We have. We are presenting today two alternative Turbine buffers for this Board's consideration.

a. Alternative One. The first alternative is Desert Claim's setback and buffer proposal for the Project, which was evaluated in the Final EIS. The proposed language for Alternative One is attached to this Progress Report as Exhibit J.

Under Alternative One, there would be a minimum setback of at least 487 feet between the turbines and all Project area boundaries. This 487-foot setback would also be established between turbines and public roads, existing utility transmission corridors, and the Kittitas Reclamation District (KRD) North Branch Canal. The amount of this setback is based on the safety zone calculated for the Turbines, as explained in the

EIS. This 487-foot setback, based upon the analysis of environmental impacts, is nearly double the setback proposed in our original application, which was 250 feet from the Project Area boundary lines.

In addition to the 487-foot safety zone setback, our company is also committed to siting each Turbine no closer than 1,000 feet to any existing residence adjacent to the Project area. As we have explained, we make this commitment in order to be a good neighbor to the people who already have homes near our project. This “good neighbor” commitment is not for the purpose of mitigating environmental impacts; the 487-foot safety zone setback from all Project Area boundary lines already does that. More important, this “good neighbor” commitment was never intended as a typical zoning setback. Depending on the location of a neighboring home, a turbine might be located anywhere from 500 feet to 950 feet from our Project Area boundary line. The intent here is to recognize that the folks who have already built homes nearby do not have a choice about where to locate their houses, and we wanted to be sensitive to that fact.

This alternative is supported by the environmental analysis in the EIS. It would enable us to develop a project that meets our objective of a commercially viable wind farm. And it would provide the absolute certainty of a minimum setback of at least 487 feet in all instances. Based upon the record before the Board, we do not believe a larger setback or an additional buffer is required or warranted.

That being said, we also understand the comments expressed by members of the Board of County Commissioners last month. We have taken seriously Commissioner Huston’s challenge to us to come up with a buffer proposal that could

provide more benefit to adjacent property owners while still allowing us to develop a viable project.

b. Alternative Two.

Proposed language for Alternative Two is attached to this Progress Report as Exhibit K. Under Alternative Two, the minimum safety zone setback of 487 feet would be maintained from Project Area Boundaries, public roads, transmission line corridors, and the KRD canal. In addition to this minimum setback, an additional buffer would be imposed follows:

A turbine buffer of 1,000 feet would be maintained from existing residences, and also from the “build line” on adjacent property that is both privately-owned and undeveloped. In other words, a neighboring private property owner who has not yet built on his land would have the assurance that no turbine would be located closer than 1,000 feet from the edge of his required front yard setback. This would give the same consideration to the owner who has not yet developed his land as to the person who already has a house near our project.

This alternative would avoid imposing a 1000- foot buffer adjacent to DNR land, which borders a substantial amount of our Project Area. Such a blanket buffer to protect the development potential of DNR land would be completely unwarranted and would have a truly onerous impact on the feasibility of our project.

In addition to allowing greater flexibility adjacent to DNR land, this alternative must also allow an opportunity for voluntary waivers by adjacent private property owners.

We are proposing, as a necessary part of Alternative Two, that Desert Claim could obtain a voluntary agreement by an adjacent land owner to permit a smaller Turbine buffer. In no case would any Turbine be located closer than 487 feet from the Project Area Boundary line, even with a buffer waiver. As you instructed us, we have included a process for County approval of any such waiver. We are proposing that each waiver be approved by the Director of Community Development Services and processed by the County as a Minor Revision to the Project. In this way, the County is involved in and approves the waivers. A proposed draft of such a voluntary waiver agreement is attached to this Progress Report as Exhibit L.

The voluntary waiver we are proposing is different from a typical zoning variance from a development regulation of general applicability. A zoning variance is usually necessary when a blanket requirement can't be complied with on a particular piece of property – as in the case of an irregularly-shaped lot, for example.

In the case of the Desert Claim project, a 1,000-foot Turbine buffer is not a specific requirement applicable to wind farms in your code. Nor is a 1,000-foot setback generally required for other uses in the Ag-20 or Forest and Range zones. Rather, it would be imposed on this project in order to provide specific consideration to neighboring private property owners who might wish to build on their land in the future. If a neighboring property owner wishes to waive this buffer, he should be able to negotiate with us – and enter into a voluntary agreement that is reviewed and approved by the County. Alternative Two would respect a neighboring owner's right to use his own land as he sees fit, including his right to negotiate with us for some compensation in exchange for agreeing to a smaller buffer.

A separate variance process – involving an appeal to the Board of Adjustment – would not be necessary or appropriate. First, the standards applicable to variances (such as having to prove “undue hardship”) do not apply where what you are trying to do is simply to protect the opportunity for an adjacent owner to subdivide and develop his land. If he does not object to a smaller buffer, then the County should respect that voluntary decision, and no one should have to establish any particular hardship. Nor should such a voluntary agreement by two willing parties be subjected to a potential appeal to the Board of Adjustment, which is how the County’s variance process works. This would be exactly the opposite of what the County Commissioners intended in enacting the wind farm permitting ordinance.

Instead of a cumbersome variance process, Alternative Two would provide for the County to maintain ultimate control over the Turbine buffer through the Minor Revision process under the Development Agreement. We would not be sneaking our Turbines next to the property line under secret deals with adjoining landowners. Under Alternative Two, any reduction of the 1,000-foot buffer would have to be reviewed and approved by the Director. As a Minor Revision to the project, it would also be subject to an appeal to this Board.

Alternative Two also includes a necessary provision for reconfiguration of the Turbine layout at the time of Final Construction Plan submittal, in order to provide the optimum layout for generation of electricity. Because the 1,000-foot buffer would inevitably require the elimination of some Turbines from the Project, we must have the ability to site the remaining Turbines so as to get the maximum public benefit from the Project.

Two key differences exist between Alternative One and Alternative Two.

Alternative One provides the certainty of an absolute minimum setback of 487 feet from all property lines, in addition to an additional buffer from existing homes. Alternative Two would also provide a buffer that recognizes residential development potential, along with the opportunity for neighboring property owners to receive compensation or negotiate some other benefit to allow us to locate Turbines closer than 1,000 feet to a homesite.

In addition, to the extent that it would require elimination of Turbines – a result that is inevitable – Alternative Two would not generate the same public benefits from power production, tax revenue, and construction spending as would be generated by Alternative One.

Although Alternative Two may be a feasible alternative, we want to be clear that it comes at some cost to the Project and the County. Under Alternative Two with the 1,000-foot setback, we will lose at least 45 turbines. We prepared a graphic showing this impact and will submit a copy of it to the record. Losing at least 45 turbines impacts the economic viability of this Project, greatly diminishes the power output from the Project, and reduces the amount of revenue—tax, construction-related, and multiple-effect in the county--generated by the Project.

For these reasons, we strongly prefer Alternative One and ask you to impose it instead of Alternative Two. In response to Commissioner Huston's direction, we believe we can work with Alternative Two as it is proposed if we can obtain a sufficient number of waivers acceptable to the County such that we can get back some of the lost turbines.

Either alternative would be workable and would be consistent with the environmental analysis in the EIS. In the end, this is a policy choice for the Board of County Commissioners to make.

Thank you for your time and attention.

I would be happy to answer any questions.