

## **THIRD PROGRESS REPORT**

**February 15, 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 Z 2003-01  
Development Agreement**

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On January 27, 2005, we presented to the Board of County Commissioners our second progress report regarding a number of issues in the draft Development Agreement for the Desert Claim Wind Power Project. At that time, the Board directed us to obtain a final, signed Fire Services Agreement and to obtain final drafts of the other approvals and plans required for the project. Those additional approvals and plans are the Franchise Agreement and the draft Construction Traffic Management Plan. The Board directed us to obtain these draft documents because it wants them attached to the Development Agreement when the Board sends it out for further public review and comment.

The Board also directed us to make certain changes to the safety-zone language in the Development Agreement in order to prohibit residential structures from being constructed within the project boundary near the turbines.

This is our third progress report to the Board. Below I will explain our progress on each of the topics provided to us by the Board.

At this time we also are submitting a revised Development Agreement to the Board. It is attached to this progress report as Exhibit 1.

1. Fire Services Agreement. On February 10, 2005, the Commissioners of Fire District No. 2 voted to approve the proposed Fire Services Agreement for the Desert Claim Project. Based on that vote, Fire Chief Stan Baker of Kittitas County Fire District No. 2 signed the agreement. A copy of the signed agreement is attached to the Development Agreement as Exhibit J.

We inserted the following language into Section 6.20.1 of the Development Agreement to refer to the signed Fire Services Agreement:

6.20.1.1. Desert Claim entered into a Fire Services Agreement with Kittitas County Fire Protection District 2 for fire protection service to the Project.

6.20.1.2. The Fire Services Agreement includes a fire prevention and fire control plan for the Project.

6.20.1.3. A copy of the Fire Services Agreement is attached to this Agreement as Exhibit J and is incorporated herein by this reference.

2. Franchise. In addition to obtaining the signed Fire Services Agreement, the Board also told us to attach a draft Franchise Agreement for the Project to the Development Agreement. The Board told us to work with the Director of Public Works, Paul Bennett, to obtain the draft franchise. We did.

We met with Paul Bennett on February 9, 2005 to discuss the Franchise Agreement. Mr. Bennett asked us make a number of changes to the original draft Franchise Agreement that we had provided to him and which we previously provided to this Board. Mr. Bennett asked us to make the following changes to the draft Franchise Agreement:

- First, to change the definition of “Franchise Route” to “Franchise Area” so that the franchise corresponds to the Project Area. By making this change, Mr. Bennett stated that we could use any public right-of-way within the Franchise Area subject to the terms and conditions of the Franchise Agreement. Mr. Bennett suggested this change and is comfortable with it because we are required to obtain a permit from the County before we undertake any work; in other words, even though we may obtain a franchise, we still have to obtain a permit and thus the County controls where we locate our improvements;
- Second, to change the bond language within the Franchise Agreement, as it relates to improvements within the County right-of-way, to indicate that we will be required to post a larger bond if we locate our improvements in the center of the right-of-way instead of locating the improvements within the shoulder of the right-of-way. Mr. Bennett wants this change because it costs more to repair the roadway as

compared to repairing the shoulder and thus we would be required to post a larger bond to make sure the repairs are completed;

- Third, to change the franchise to require us to submit documents in the auto-cad format being used by the County at the time of submittal;
- Fourth, to modify the Force Majeure language to indicate that we must immediately clear any right-of-way in emergency situations; and
- And last, to insert the insurance amounts he specified.

We made all of these changes.

Mr. Bennett also asked us to provide the County a redline version of the Franchise Agreement. He asked us to prepare the redline version in order to show the changes we made to the County's standard form franchise agreement. Mr. Bennett asked us to attach the redline version of the Franchise Agreement to the draft Development Agreement so that the public can see these changes. In this way, the County and the public can quickly review and comment on the proposed changes to the Franchise Agreement.

We attached a redline version of the Franchise Agreement to the Development Agreement as Exhibit F.

Additionally, we inserted the following language to Section 5.8.5 of the draft Development Agreement to refer to the draft Franchise Agreement:

5.8.5. A copy of the draft Franchise for the Project is attached to this Agreement as Exhibit F and is incorporated herein by this reference.

3. Construction Traffic Management Plan. The other document to be attached to the draft Development Agreement pursuant to the Board's instructions is the draft Construction Traffic Management Plan.

At our meeting with Mr. Bennett on February 9, 2005, we also discussed the draft Construction Traffic Management Plan with him. Mr. Bennett asked us to make a couple of changes to the original draft. Namely, he asked us to:

- Clarify that we will make any required roadway improvements and repairs in accordance with County and Washington State Department of Transportation road standards;
- Clarify that the County will accept our roadway repairs and improvements only if they are in accordance with those standards; and
- Clarify that we will describe any required roadway improvements in the addendum to the Construction Traffic Management Plan that we are required to prepare and submit to the County.

We made the changes requested by Mr. Bennett.

The revised Construction Traffic Management Plan is attached to the Development Agreement as Exhibit I. We inserted the following language into Section 16.18.1 of the Development Agreement to refer to the Construction Traffic Management Plan:

6.20.2. *Construction*

6.20.2.1. Desert Claim shall mitigate traffic impacts associated with the Project through the development and approval of a Construction Traffic Management Plan.

6.20.2.2. A draft Construction Traffic Management Plan for the Project is attached to this Agreement as Exhibit I and is incorporated herein by this reference.

6.20.2.3. The Construction Traffic Management Plan shall be subject to review and approval by the County, the County Sheriff's Department and WSDOT.

4. Safety-Zone Modification. At the last meeting, the Board told us that it does not want residential structures constructed within the 487-foot safety zone around the turbines. We agreed to make the change requested by the Board. At that meeting, we also made it clear that the 487-foot safety zone would always be maintained on the property within the project area.

To make the change requested by the Board, we modified Section 5.3 by adding a new Section 5.3.1. The new Section 5.3.1 prohibits residential dwellings and/or habitable structures within the 487-foot safety zone setback. Following is the language from the new Section 5.3.1 in the Development Agreement:

5.3.1. No residential dwellings and/or habitable structures shall be constructed within the safety zone setback required pursuant to this Section 5.3. This prohibition shall be included in the Wind Farm Resource Overlay Zone designation for the Project Area.

## **CONCLUSION**

We believe we complied with all of the instructions given to us by this Board on January 27, 2005. Based on that, we believe the draft Development Agreement is ready to be distributed for a brief public comment period. We respectfully request the County send the draft Development Agreement out for public comment. We provided to County Staff a copy of the draft Development Agreement that you have before you. It is saved to a disk as a pdf file and it is ready to be distributed to the public for review and comment.

Thank you for the opportunity to present this third Progress Report.