BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2006-02

Desert Claim Wind Power Project

DECLARATION OF DAVID STEEB IN SUPPORT OF WAC 463-28-030(1) DETERMINATION

David Steeb hereby declares:

1. I am the Project Director for the Desert Claim Wind Power Project (the "Project"), and have been its Project Director since 2001.

2. In 2001, enXco, Inc., the parent company of Desert Claim Wind Power LLC ("Desert Claim"), began evaluating potential sites in Kittitas County for a commercial scale wind project. At that time, under Kittitas County Ordinance 2001-12, wind projects were allowed as a conditional use in all Ag-20, Forest and Range, Commercial Agriculture and Commercial Forest zoning districts. In late 2002, the County enacted Ordinance 2002-19, which established the wind power siting provisions now found in Kittitas County Code chapter 17.61A. Under chapter 17.61A, a wind project may be permitted in any area zoned as Ag-20, Forest and Range, Commercial Agriculture or Commercial Forest, but it requires a Wind Farm Resource Development Permit and a development agreement, a site-specific amendment to the Comprehensive Plan land use designation map, and a site-specific rezone. After considering the wind resource, land availability, transmission access, potential

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environmental impacts and neighboring land uses, Desert Claim selected a location for its project, approximately 8 miles northwest of Ellensburg. The original project location is shown on **Exhibit 1**.

3. After selecting a location for the project, Desert Claim considered its permitting options. In 2001, the Legislature had amended EFSEC's statute to allow wind projects to "opt in" to EFSEC jurisdiction, so Desert Claim had a choice of filing an application with Kittitas County or with EFSEC. Looking at EFSEC's regulations, we understood that, if we filed with EFSEC, the Council's proceedings would be stayed while we tried to obtain County land use approvals. However, if we went through the County process and obtained County approvals, we would not need to also obtain EFSEC's approval. We concluded that the most efficient way to proceed was to file an application with Kittitas County first. If the County did not approve the project, we could file an application to EFSEC.

4. Prior to filing our County application, we met with Community Development Services' planning staff to understand the County process, the application requirements, and any issues or concerns about the project. After getting input from staff, we finalized the Project design and prepared the application in a way that would satisfy existing requirements and address concerns that had been identified.

5. Desert Claim filed an application with Kittitas County on January 28, 2003, and the County accepted it as complete the following day. The application described a 180 MW wind power project, with 120 turbines spread out over a 5,237-acre project area.

6. The County process concerning Desert Claim's application took approximately twenty-six months. A detailed chronology of the County process is attached as **Exhibit 2**. The following is a summary. In April 2003, the County issued a SEPA

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Determination of Significance. The County published a Draft EIS in December 2003 and a Final EIS in August 2004. In September 2004, Desert Claim developed a "draft" development agreement with the planning staff and County attorney. After circulating this development agreement to the public, the Kittitas County Planning Commission and the Kittitas County Board of County Commissioners (BOCC) held joint hearings on October 25-26, 2004. At the conclusion of those hearings, the Planning Commission recommended denial of Desert Claim's application. For the next five and a half months, the BOCC held a series of hearings and meetings to consider Desert Claim's application. After hearings held on November 8, November 9 and December 7, 2004, the BOCC asked us to revise the development agreement. On December 27, 2004, we submitted a revised development agreement, and the BOCC said further revisions might be necessary, and deferred any decision until January when two new commissioners would take office. The BOCC held meetings on January 11, 20 and 27, 2005, at which we reported on modifications to the revised development agreement that we had made based on discussions with the BOCC during the January meetings. On February 15, 2005, we presented another revised development agreement. The BOCC put this out for public comment and held public comment hearings on March 1 and 9, 2005.

7. At the conclusion of the hearing on March 9, the BOCC deliberated and voted to deny Desert Claim's application. On April 5, 2005, the BOCC issued Findings of Facts, and Resolution 2005-46 denying Desert Claim's application.

8. Desert Claim appealed the decision to Superior Court, but the court upheld the decision. *Desert Claim Wind Power, LLC v. Kittitas County*, No. 05-2-00243-6, slip. Op. at 11 (Kittitas Cty. Super. Ct. Nov. 4, 2005).

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9. Desert Claim then considered whether additional changes could be made to the Project to address concerns that were raised during the County process. We were able to obtain a lease on neighboring DNR land, and that allowed us to consolidate the Project on to contiguous parcels and eliminate portions of the Project that Sun East landowners objected to during the County process. We also made some additional changes to the Project and mitigation commitments to address concerns expressed during the County process.

10. On November 6, 2006, Desert Claim submitted an Application for Site Certification to EFSEC. The Application describes the Project that Desert Claim proposed for certification by this Council. It consisted of 90 2MW turbines, located on 4,783 acres of public and private land northwest of Ellensburg. **Exhibit 3** compares the Project Area to the area identified in the original application to Kittitas County.

11. Prior to filing the Application, Darin Huseby, enXco's Development Director for the Northwest Region met with each of the Kittitas County Commissioners to discuss the changes we made to the project. On November 6, 2006, I hand-delivered copies of the Application to each of the Commissioners and to the Director of Community Development Services. On November 30, 2006, we sent a follow-up letter to the Commissioners, a copy of which is attached as **Exhibit 4**. On December 5, 2006, we received a letter from Commissioner Bowen, a copy of which is attached as **Exhibit 5**.

12. In May 2007, Desert Claim informed EFSEC that it would modify the Project's setbacks and shadow flicker mitigation to reflect EFSEC's recommendation on the Kittitas Valley Project. Using the four-time-height formula, the new setback from existing residences would be 1,656 feet, which would reduce the number of turbines from 90 to 82.

13. On May 17, 2007, Desert Claim met with Kittitas County Community Development Services. Desert Claim was represented at the meeting by Darin Huseby

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(enXco Development Director Northwest Region), Karen McGaffey and myself. Community Development Services was represented by Darryl Piercy (Director), Allison Kimball (Assistant Director), Joanna Valencia (Planner) and Neil Caulkins (attorney). During the meeting, Mr. Piercy explained that three issues led to the BOCC denial of Desert Claim's original application: (1) inadequate mitigation of potential shadow flicker, (2) the project configuration over several non-contiguous parcels, and (3) inadequate setbacks from existing residences. Mr. Piercy indicated that the changes Desert Claim has made to the Project fully addressed the first two of these issues. However, Mr. Piercy indicated that Desert Claim's proposal to locate all turbines at least 1,656 feet (four times the turbine height) from existing residences was inadequate; he believed the BOCC would require a 2,500-foot setback from existing residences unless there are site-specific reasons justifying a lesser distance. Mr. Piercy stated that he did not believe the County had any other concerns about the revised Project.

14. We appreciated Mr. Piercy's candor during our March 17th meeting, and his willingness to clearly state that he believes the County's only remaining concern about the Desert Claim Project is the setback from existing residences. However, Mr. Piercy also acknowledged that a decision to permit the Project under KCC chapter 17.61A would ultimately be made by the BOCC, not Community Development Services. We, therefore, asked to meet directly with the BOCC to hear their views about this first-hand. By letter dated May 22, 2007, Mr. Piercy responded that the BOCC declined our request to meet with them. Attached as **Exhibit 6** is a copy of that letter.

15. Although Desert Claim and the County continue to disagree about the appropriate setbacks from residences, it is an issue that Desert Claim has been attempting in good faith to resolve since it filed its initial application with the County. In January 2003,

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Desert Claim originally proposed a 1,000-foot setback from existing residences, and in 2004, Desert Claim submitted various iterations of a Draft Development Agreement to the County, each of which proposed a 1,000 setback. At a BOCC hearing on January 20, 2005, all three commissioners seemed to accept a 1,000 foot setback from the build line on adjacent properties. Commissioner Bowen stated it "doesn't cause me any grief." Commissioner Huston said that it was "an acceptable buffer" and that he had "no issue with that." Commissioner Crankovich said "I can agree with that." Relevant portions of the transcript are attached as **Exhibit 7**. However, on January 27, 2005, County Attorney Jim Hurson advised the Commissioners that the turbines could be "visually dominant" from one-quarter to one-half mile away. Relevant portions of the transcript are attached as **Exhibit 8**. Then in April 2005, the BOCC issued Resolution No. 2005-46, in which it concluded that "a minimum of 1/2 mile separation from wind turbines and residences would be necessary to reduce significant adverse impacts to moderate adverse impacts." In November 2006, Desert Claim filed its EFSEC Application, and configured turbines to ensure that noise levels would not exceed 50 dBA at the boundary line of adjoining properties where residences were or could be constructed. In this new configuration, the closest residence was 1,106 feet from a turbine. Following the Council's decision on the K.V. Project, Desert Claim has reconfigured the Project to ensure that all turbines are at least 1,656 (four times tip height) from existing residences.

16. Like most wind power developers, enXco considers several factors in identifying potential project sites:

(a) Wind Resource. The most important factor in selecting a site for a wind power project is the available wind resource. enXco was looking for a site with an average wind speed of 13 to 17 miles per hour. Potential sites are typically identified using published

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wind maps, and then promising sites are evaluated more thoroughly, usually by collecting 1 to 2 years of on-site meteorological data.

(b) Access to Electrical Transmission. Access to existing electrical transmission lines is a significant advantage in wind power project development. Access to nearby lines, or in this case, lines that cross the Project itself, avoids or substantially reduces the cost associated with constructing new lines, which can range from $ 500,000 to $ 1,000,000 per mile. The presence of nearby transmission lines avoids the permitting complications of constructing new transmission lines, and can eliminate the aesthetic concerns about constructing new transmission lines to connect a wind project to the regional transmission grid.

(c) Environmental Constraints. Wind power developers try to avoid areas of significant known environmental concerns. Developers try to avoid lakes, rivers, wetlands, wildlife refuges, and endangered species habitat.

(d) Available Real Estate. A commercial wind power development typically requires about 5,000 acres of open land. Developers typically look for large, 10,000 to 50,000 acre open tracks of land as potential areas for development, and then gradually focus in on specific areas. Ultimately, project development requires rights to use the land, therefore, the company's ability to negotiate leases with existing property owners is critical to site selection.

(e) Zoning and Land Use Regulations. Wind projects not considered an outright permitted use anywhere in the County, but are potentially allowed in all areas zoned A-20, Forest and Range, Commercial Forest or Commercial Agriculture.

17. Desert Claim's parent corporation enXco initially identified the Kittitas Valley, extending from Lookout Mountain on the west to the Columbia River on the east,

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and between the National Forest Lands in the north and I-90 in the south as an area worth further investigation. It then looked for large tracts of land and contacted landowners about the possibility of obtaining wind leases. As a result, enXco identified a project area of over 5,000 acres owned by eight private land owners located northwest of Ellensburg, and obtained leases for those properties. After performing further on-site meteorological evaluations, we designed the Desert Claim Project at this location and submitted an application to Kittitas County concerning that project area. Since then, Desert Claim has been able to obtain wind leases on DNR land, and has reconfigured the Project to utilize a group of contiguous parcels, removing eastern portions of the original Project area. Although enXco and Desert Claim considered other properties and locations in the County, we were not able to identify other commercially available properties that provided a comparable combination of wind conditions, transmission access and minimal environmental impacts and available land.

18. The Kittitas County Planning Commission and BOCC are currently considering changes in the Comprehensive Plan and zoning code that would designate an area of approximately 500 square miles in the eastern portion of the County as a pre-identified Wind Farm area. **Exhibit 9** is a map of this area proposed for the overlay. Approximately 90% of the land included in the proposed overlay is not available for wind project development because it is either part of the United States Department of Defense's Yakima Training Center or one of several wildlife areas designated by the Washington Department of Fish and Wildlife (the Colockum Wildlife Area, the Quilomene Wildlife Area, the Wenas Wildlife Area and the Whiskey Dick Wildlife Area). Of the remaining land, most is already occupied by the Wild Horse Wind Project or is under lease by one of our competitors, Invenergy, for the possible development of a wind power project. There is

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not sufficient remaining land within the proposed overlay area to develop another commercial wind power project.

I declare under penalty of perjury under the laws of Washington that the foregoing is true and correct.

Executed this 27 day of June, 2007, at Woodinville, Washington

David Steeb

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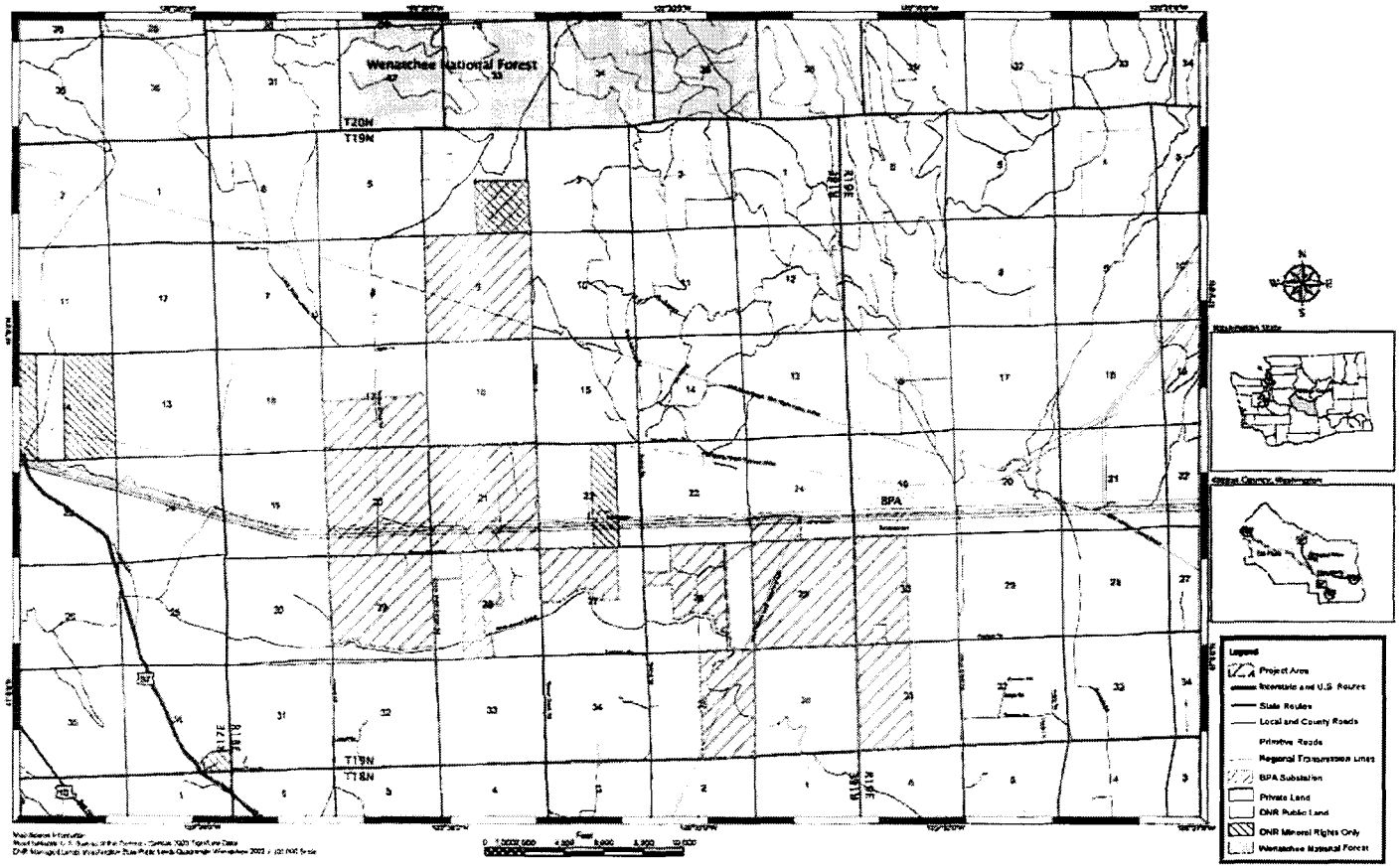

Source: Desert Claim, LLC, 2003

Huckell/Weinman Associates, Inc. HWA	**Kittitas County** **Desert Claim Wind Power Project EIS**	**Project Vicinity Land Ownership**

Exhibit 1

EXHIBIT 2

Date	Summary of Activity
August 6, 2002	Desert Claim attends pre-application meeting with Kittitas County Community Development Services (CDS).
September 25, 2002	Desert Claim meets with CDS regarding application and permit process.
November 14, 2002	Desert Claim meets with CDS regarding application and permit process.
January 15, 2003	Desert Claim meets with CDS, Building Department and the Public Works Director.
January 28, 2003	Desert Claim files an application with Kittitas County.
February 19, 2003	Desert Claim meets with CDS regarding application.
February 27, 2003	Desert Claim meets with CDS and Washington Department of Fish and Wildlife regarding mitigation issues.
March 25, 2003	Desert Claim meets with CDS.
April 8, 2003	Desert Claim meets with County's EIS consultant.
April 23, 2003	Kittitas County publishes Determination of Significance and EIS Scoping Notice.
May 7, 2003	Kittitas County holds EIS scoping meeting.
May 14, 2003	Kittitas County holds Open House and community meeting regarding the Project.
June 24, 2003	Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS.
August 12, 2003	Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS.
September 3, 2003	Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS.
September 9, 2003	Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS
September 24, 2003	Kittitas County holds Open House regarding the Project.
October 29, 2003	Desert Claim meets with CDS and County attorney regarding the Development Agreement.
December 1, 2003	Desert Claim meets with County EIS consultant regarding the draft EIS.
December 15, 2003	Kittitas County publishes the draft EIS.
January 16, 2004	Desert Claim meets with CDS and Washington Department of Fish and Wildlife regarding mitigation.
January 20, 2004	Kittitas County holds public hearing on the draft EIS.
February 10, 2004	Desert Claim meets with CDS, County attorney and EIS consultant regarding the SEPA process.
March 16, 2004	Desert Claim meets with CDS and Public Works Director regarding airport and Smithson Road issues.

May 3, 2004	Desert Claim meets with Public Works Director regarding Smithson Road issues.
May 4, 2004	Desert Claim meets with Bowers Field Airport Advisory Committee, CDS and Public Works Director regarding airport issues.
May 26, 2004	Desert Claim meets with CDS and County attorney regarding the EIS.
June 1, 2004	Desert Claim meets with CDS regarding Pheasant Lane issues.
June 15, 2004	Desert Claim meets with CDS regarding Pheasant Lane issues
August 10, 2004	Desert Claim meets with CDS regarding the EIS.
August 16, 2004	Kittitas County publishes the Final EIS.
September 13, 2004	Desert Claim meets with CDS regarding the Development Agreement.
September 16, 2004	Kittitas County publishes a draft Development Agreement for public comment.
September 30, 2004	Desert Claim meets with CDS regarding the Development Agreement
October 11, 2004	Desert Claim meets with County EIS consultant regarding the Development Agreement.
October 20, 2004	Desert Claim meets with CDS, County attorney and EIS consultant regarding the staff report and Development Agreement.
October 25-26, 2004	Kittitas County Planning Commission and Board of County Commissioners (BOCC) hold joint hearings regarding the Desert Claim application. Desert Claim presents a revised Development Agreement.
October 27, 2004	Kittitas County Planning Commission recommends denial of the Desert Claim Application.
November 8, 2004	BOCC hearing.
November 9, 2004	BOCC hearing.
November 11, 2004	Desert Claim meets with Public Works Director regarding mitigation.
November 18, 2004	BOCC hearing.
November 29, 2004	Desert Claim meets with CDS and County attorney.
December 7, 2004	BOCC hearing.
December 8, 2004	Desert Claim meets with CDS.
December 14, 2004	Desert Claim meets with County EIS consultant regarding the Development Agreement.
December 15, 2004	Desert Claim meets with CDS regarding the Development Agreement.
December 20, 2004	Desert Claim submits a second revised Development Agreement.
December 27, 2004	BOCC Hearing.
January 11, 2005	BOCC Hearing.
January 20, 2005	BOCC Hearing.
January 25, 2005	Desert Claim meets with CDS regarding the Development Agreement.

January 27, 2005	BOCC Hearing. Desert Claim submits a third revised Development Agreement.
February 15, 2005	BOCC Hearing. Desert Claim submits a fourth revised Development Agreement.
February 16, 2005	Kittitas County publishes the revised Development Agreement for public comment.
March 1, 2005	BOCC Hearing
March 9, 2005	BOCC Hearing. At hearing's conclusion, BOCC votes to deny Desert Claim's application.
March 29, 2005	BOCC Hearing.
April 5, 2005	BOCC adopted Resolution No. 2005-46 and Findings of Fact.
Summer-Fall 2005	Desert Claim attempts to contact Kittitas County Commissioners by telephone to discuss possible changes in the Project. Messages are not returned
November 4, 2005	Kittitas County Superior Court upholds BOCC decision.
October 24, 2006	Desert Claim meets with each of the Kittitas County Commissioners individually to discuss changes being made to the Project.
November 6, 2006	Desert Claim files its Application for Site Certification with EFSEC, and hand-delivers copies of the Application to CDS and the Kittitas County Commissioners.
November 30, 2006	Desert Claim sends a letter to the Commissioners requesting to meet with them to discuss the revised Project.
December 5, 2006	Commissioner Bowen responds by letter, indicating that the County has "no interest" in "making a decision about the project" outside the process outlined by Kittitas Code chapter 17.61A, but offering to arrange a public information meeting.
January 30, 2007	EFSEC Land Use Consistency Hearing.
May 8, 2007	EFSEC grants Desert Claim's motion and rules that Desert Claim is not required to file a new application with Kittitas County.
May 17, 2007	Desert Claim meets with CDS and County attorney regarding the revised Project, and requests an opportunity to meet with the BOCC.
May 17, 2007	EFSEC sends a letter to the BOCC encouraging the Commissioners "to use your best efforts to work with the Applicant and to resolve as many issues as possible in advance of any adjudication."
May 22, 2007	CDS Director Darryl Piercy letter indicates that the BOCC respectfully declines to meet with Desert Claim.

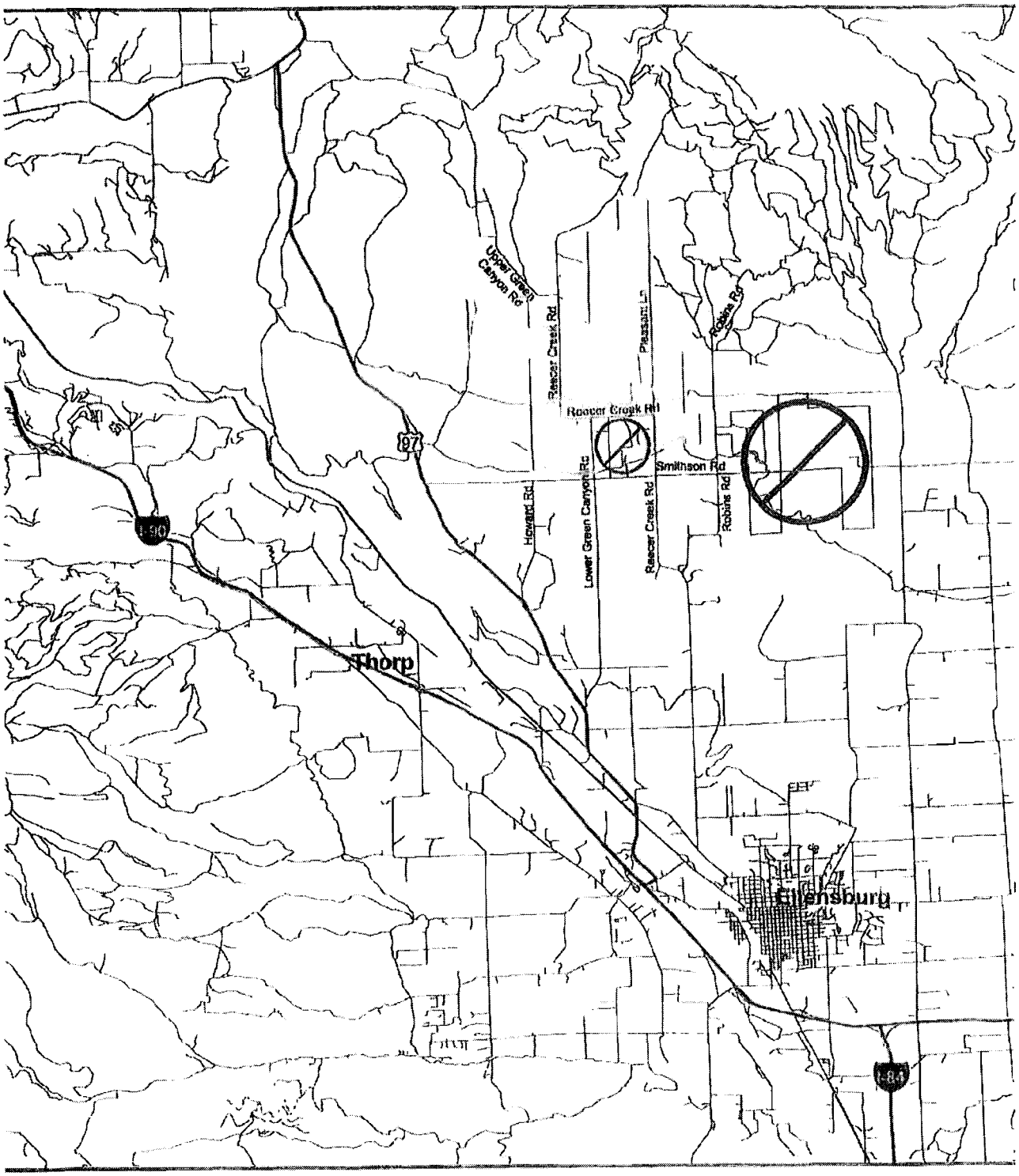
Upper Green Canyon Rd
Reecer Creek Rd
Pleasant Ln
Robins Rd
Reecer Creek Rd
Smithson Rd
97
Howard Rd
Lower Green Canyon Rd
Reecer Creek Rd
Robins Rd
90
Thorp
Ellensburg
82

Exhibit 3

Darin Huseby
Director, Northwest Region
5015 NE Cleveland Avenue
Tel: 503-493-2270
Fax: 503-493-2268

November 30, 2006

To: Commissioners Bowen, Crankovich, and Huston,
and Commissioner-Elect Mark McClain
Kittitas Board of County Commissioners
205 W 5th Ave, Suite 108
Ellensburg, WA 98926

Dear Commissioners and Commissioner-Elect,

I am sending this letter as follow up to my meetings with each of you on October 24, 2006 (except Commissioner-Elect McClain). As you are aware, enXco has since submitted an Application for Site Certification to Washington EFSEC for the Desert Claim Wind Project. We have provided each of you with a copy of that application. I have attempted to reach each of you individually by phone in hopes of receiving feedback regarding our EFSEC application and perhaps engage in a positive discussion about the current state of the Desert Claim Project. Unfortunately, I have not received any responses to my voice mail messages.

As is evident in our EFSEC application, enXco has worked diligently to improve the project since the time of the County's denial. We have made a concerted effort to specifically address the concerns raised during the County process. The application to EFSEC includes the following improvements, which we feel should please the County:

- The project is now contiguous with regard to land parcels;
- The project now consists of fewer turbines;
- The project has been altered to address noise & shadow flicker issues.

I welcome the opportunity to visit with each of you in person to discuss our EFSEC application in more detail. It has always been enXco's hope to attain County approval for the Desert Claim Wind Project. This hope is in no way diminished by our application to EFSEC. While we do not intend to submit a new application to the County, we do feel there is ample opportunity for enXco and the County to work together within the context of the EFSEC process. I hope you will call me if you would like to schedule a meeting in Ellensburg.

Kindest regards,

Darin Huseby
Director, Northwest Region
503-493-2270

Exhibit 4

Kittitas County, Washington
BOARD OF COUNTY COMMISSIONERS

District One	District Two	District Three
David B. Bowen	Alan Crankovich	Perry D.Huston

December 5, 2006

Dear Mr. Huseby:

We have received your letter of November 30, 2006 offering to discuss the enXco application to EFSEC. As you are aware, the current County comprehensive plan does not allow a wind farm in the area you have recently proposed to EFSEC. Likewise, the zoning in that area does not allow a wind farm in the area of your recent proposal. Despite this fact, you have told us in phone messages and in your recent correspondence that enXco does not intend to submit a land use change application to the County.

For your project to be consistent with our local land use regulations, enXco would need to obtain an amendment to the comprehensive plan and zoning through the county land use laws that were adopted under the GMA. That would require that enXco submit an application to the County to seek those changes. It is through the County's public hearing land use process that such county land use changes are considered.

If your decision to not submit the necessary application to the County is your final position on that point, such a position would be in clear contradiction of the EFSEC rules. Those rules require that an applicant act in good faith to resolve land use inconsistency. We have a lawfully adopted process in place for your company to seek consistency. We have no interest in violating the legal process by making a decision on a project outside of the lawfully adopted processes already established. To do so would be a violation of both the law and the public trust.

Since the Board of County Commissioners are the ones who make the local land use decision, we want to make sure that our local public process is not tainted. If you want to meet with the Board we could arrange a public meeting for you to discuss this with us. In that we do not have an application the Board will not, however, be able to make any decision on your project. As such, a meeting like this would be an information meeting only.

If you do submit an application we could then make the previously mentioned public meeting and its contents a part of the record. If you would like to set up such a public meeting please let us know and our staff will coordinate a time and location that can accommodate all of those who may want to attend.

Sincerely,

David B. Bowen
Kittitas County Commissioner
District # 1, Chairman

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Exhibit 5

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411 N. Ruby St., Suite 2, Ellensburg, WA 98926
CDS@CO.KITTITAS.WA.US
Office (509) 962-7506
Fax (509) 962-7682

May 22, 2007

David S. Steele
Project Director
Desert Claim Wind Power
PO Box 4
Woodinville, WA 98072

Darin S. Huseby
Development Director
Enxco
5015 NE Cleveland Ave
Portland, Oregon 97211

RECEIVED
MAY 25 2007

Dear Mr. Steele and Mr. Huseby,

Thank you for meeting with Kittitas County Staff on May 7, 2007 to discuss application moving to discuss the requirements for a new application for the Desert Claim Wind Power Project.

As we understand your proposal, the project is a 150 Megawatt (MW) wind power project located on approximately 4,783 acres of land approximately 8 miles northwest of the city of Ellensburg. You have indicated the project will incorporate REpower MM92 model turbines, towers height of 80 meters (262.5 feet), and a rotor diameter of 92.5 meters (303 feet) for a total height of 326.5 meters (1071 feet). Each turbine has a nameplate generating capacity of 2.0 MW. You propose a total of 80 turbines.

As we discussed, Kittitas County views this current proposal as a new project application. The following will be required under Kittitas County Code:

1. Amendment to the Kittitas County Comprehensive Plan through the development of a Sub-area Plan for the proposed site.
2. A rezone of the property to Wind Power Production Zone.
3. An Approved Development Agreement.
4. An approved development permit.

In addition, the Energy Facility Site Evaluation Council (EFSEC) has assumed lead agency status for this application. EFSEC will be responsible for coordination of environmental review documents including the Draft and Final Supplemental Environmental Impact Statement (SEIS) and other environmental review and analysis. We have a model of the coordination of this environmental review between EFSEC and Kittitas County with the successful application of the Wild Horse Wind Power Project in which Kittitas County incorporated environmental review under the lead agency status of EFSEC.

As we discussed, Kittitas County will not have the ability to control the elements of the application process and as such, can make no predictions as to the length of time it may take for EFSEC to complete the draft SEIS. Completion of the draft SEIS will be necessary prior to Kittitas County conducting public hearings on your application.

In addition to the issues that will be addressed as a component of the environmental review, we also discussed three specific issues that were instrumental in the denial of your previous application. These were:

1. Disconnected property locations that did not meet the same area plan requirements.
   a. Your new proposal has a single consolidated land area with no disconnected parcels.

2. Shadow Flicker impacts that were proposed to be mitigated off site.
   a. Your new proposal indicates that individual turbines that result in shadow flicker impacts will be shut down during periods of potential impact.

3. Inadequate setback of towers from residential structures on non-participating land.
   a. You have indicated that your new proposal is to have modified to provide for a set back of 4 times the height of the tower or 500 meters (1650 feet) to structures on non participating lands. Consistent with environmental analysis, Kittitas County has indicated a setback of 2,500 feet is needed to mitigate significant visual impacts to a moderate level. We have also suggested a site specific visual analysis be conducted in those circumstances where the 2,500 feet may not be necessary due to topographical or other influences that would reduce the impacts to moderate levels.

Kittitas County Staff provided you with the necessary application forms to begin the review process. As has been demonstrated in the successful Wild Horse Wind Power Project, the County process need not be long nor difficult. Completion of this process in less than six months is a realistic goal as was demonstrated with the Wild Horse Project. As discussed earlier, the only variable for the time frame is the time necessary for EFSEC to complete the DSEIS.

In our meeting you requested we consider the possibility of conducting a public meeting with the Board of County Commissioners, prior to application, to provide you with an opportunity to hear directly from the Commissioners any concerns or issues they may have in regards to your project. The Commissioners have considered your request but must respectfully decline. It is felt that to hold a public meeting where some measure of approval or rejection seems to be the goal may leave the community and applicant to believe the Commissioners have prejudged a specific project without full and fair opportunity for public participation. Such a discussion is best conducted as part of the public hearing process on your application where the full details of the project are known and the Commissioners can take specific action consistent with County code. We suggest however that Desert Claim conduct a community meeting to present your project to the community and provide information and respond to specific questions members of the public may have. This effort should provide for a better informed public and a productive public hearing regarding your application.

Thank you again for your time in meeting with us. If we can be of further assistance in submittal of your application please do not hesitate to contact either Jeremy Welcker or myself.

Sincerely,

Darryl Piercy
Director

cc: Commissioners
EFSEC
Honorable Chris Gregoire

COUNTY OF KITTITAS

KITTITAS COUNTY BOARD OF COUNTY COMMISSIONERS SPECIAL MEETING RE DESERT CLAIM WIND POWER PROJECT.	NO. 2-2003-01

VERBATIM TRANSCRIPT OF PROCEEDINGS

January 20, 2005
6:00 p.m.
Kittitas County Fairgrounds
Ellensburg, Washington

BEFORE THE KITTITAS COUNTY BOARD OF COMMISSIONERS

REPORTED BY:
LOUISE R. BELL, CCR NO. 2676

Exhibit 7

perspective, rule this a completed document until those agreements are attached and completed. And I think we have an understanding with that.

Commissioners, is that your understanding of where we are in this process?

COMMISSIONER BOWEN: Yes.

COMMISSIONER CRANKOVICH: Yes.

COMMISSIONER HUSTON: Okay, very good. Let's go ahead and talk about buffer, because that's been an important point.

Now, we've all along had essentially two buffers under discussion. One is safety buffer, and then the other that I define as the noise buffer. And I do that for a specific reason, because it's contained in Section 3, Page 211, I believe it is, in the discussion of noise in the environment impact statement. Where one of the mitigation measures -- the second one, I believe if, I remember my research correctly -- was a 1000-foot setback from the existing residences.

Now, specific language contained in SEPA, the SEPA was ruled final, the SEPA was not appealed. So I'm operating with that as -- albeit some don't agree -- but as a codified statement contained within the official document which we're operating

from in our decision-making process.

Now, there was discussion by the applicant that that was offered up more as a good neighbor measure, if you will. But I have to take it from the perspective, because it was listed as a mitigation measure, that it carries weight. So the 1000 foot is etched in my mind -- and I didn't create the numbers; it's part of the process -- as an acceptable buffer to mitigate noise of the wind power project.

Now, where it's a bit different is because in the SEPA it indicates from existing residences, which is a bit different in terms of how we usually determine setbacks.

That gives rise to my past discussion, and I'll carry it forward and ask for comment. If in fact the mitigation is necessary from existing structures to mitigate noise, then I would have to assume it is also necessary to have that same setback from any future residences. Otherwise you're dealing with an issue where now folks are being asked to either not enjoy the full use of their properties as otherwise allowed by statute, or they would have to build within this 1000-foot buffer and arguably suffer some -- some impact due to the noise.

Now, there was discussion of a voluntary variance process. We'll come back to that. What I'm doing in terms of how I'm approaching this is, is I cannot make the distinction between future and existing residences. A 1000-foot is necessary from residences, be they existing or future, and we need to deal with that.

In terms of the variance question, I would ask applicant and Legal to make comment to is whether the County can actually even entertain the notion of a voluntary variance from what is arguably a public health and safety setback. I don't know, to be perfectly honest with you.

We have setbacks for the well head protection program. We do not accept variance to that. You cannot voluntarily put your well within your septic drain field because you don't think it's a problem. We don't allow that.

We do allow certain measures whereby property owners can agree to move those lines on their own property. For instance, a person can voluntarily encumber their own property for 100 feet, which allows the other person to set 50 feet from their line as opposed to 75, which is the halfway point. So we have some precedent, at least, for that

discussion.

But what I do need is some -- some level of certainty that by allowing that -- that variance process, we're not setting up the County for some subsequent suit whereby someone who even voluntarily waived their right to that 1000-foot setback but then comes back with damage claims for hearing loss or whatever.

So I mean, I realize we're in new ground, so I'd be really surprised if you found a case that actually spoke to that point. But some discussion or at least from an ancillary perspective in terms of other voluntary waivers, speaking to that sort of a buffer that I can try to wrap my arms around and see what kind of liability, if any, I'm creating for the County.

Now, in terms of the setback not applying from public land, I don't know that I have any heartburn about that, and I'll solicit comments from my other commissioners obviously. Public land land does not lend itself to residential development. I think we still need to adhere to safety setbacks. I haven't heard any notion that we can vary from them, although I suppose that door is now open, if there's some discussion you can voluntarily waive the safety

setback. And that's the 487-foot, if memory serves correctly, for blade throw, tower collapse, ice throw, that sort of thing, then now I suppose I need to hear that. But I don't have an issue with the different zone -- setback, rather, from the public land. But I do need a little -- a little discussion about the whole variance process.

The 1000-foot build line, I have no issue with that. There's precedent for that, back to the well head protection program. The well head protection requires I believe it's 150 feet, so it's 75 feet from each property line, spread evenly between the two parcels. Albeit I think in Ag 20 the sideline setback is five feet.

Where are my building experts? Yes, five feet. So I suppose theoretically from that line it would be 995 feet. That's fine; I have no issue with that. That's completely consistent with how we generally use setbacks. But I do need that discussion in terms of the voluntary variance.

In terms of who decides on that variance, I have no issue with the process that's outlined. Community Development Services director is certainly able -- since if it's a voluntary setback, it has to be accompanied by the documents appropriate to that,

your CCRs or whatever form that takes. Permanent easement, whatever.

So that shouldn't be much to rule on. Those documents either exist or they do not. So I don't know that I need a board to read whether those documents exist or they do not. So I don't have any issue with that process.

That's my comments on the buffer at this time. I suppose I've essentially spoken to Alternate 2, I guess it is. Commissioners, observations?

COMMISSIONER BOWEN: On the buffer with the public land, I think -- I don't know, maybe Commissioner Crankovich can clarify. It sounded like he was asking if they'd been talked to about it, is all, more so than anything else.

COMMISSIONER CRANKOVICH: Yeah, I was just curious as to if DNR's involved in this at all, because they are a bordering landowner, even though it is a public land. I was just wondering if they had been addressed at all.

COMMISSIONER BOWEN: And then the 1000 foot, as you mentioned, from the build line doesn't cause me any grief. It's the noise that kind of created the setback in the first place. I'm wanting to make sure we measure and understand just exactly what

that means.

I realize you're in a rural area, you're going to have balers out there, you're going to have tractors out there making noise on occasion. I don't know if it's 30 percent of the time that you live out there, but you do it, and I'm as guilty as anybody of that, having put mufflers on my swather that weren't exactly correct.

But anyway, the -- I don't have a lot of grief with that. I just wanted to make sure we don't have the equivalent of a drone on a small plane next door to somebody having a 1000-foot away. That's my concern.

COMMISSIONER HUSTON: Okay, I'll try to give some -- some additional guidance in terms of the setback from public land, and then I'll take liberties with your comments and then you can correct me if I'm wrong.

I guess the discussion of DNR's being consulted I'm hearing as an underlying notion that the 1000 feet should apply to all, quote, build lines, unquote, and that the DNR would be subject to the voluntary variance process; or do I hear some agreement that there could be a different setback from public land?

COMMISSIONER CRANKOVICH: I think there could be a different setback from the public land, but I mean, I -- my concern is that -- is has the DNR been involved in the process? I mean, you can't just assume because it is public land that they have no, you know, no input in what goes on. If they could negotiate something less than that, that's fine. But as long as -- as long as they're involved in the process, I don't think they should be ignored just for the fact that it's public land.

COMMISSIONER HUSTON: Okay, let me rephrase my question, then. Listening to your comments, what I hear -- and I guess let me back up. Certainly DNR could give testimony if we go back out with a Development Agreement for public comment. That's certainly not inappropriate and perfectly acceptable.

At this point I guess I'm trying to determine what that Development Agreement draft will say. The -- we can establish as a board arbitrarily, frankly, a different setback for public land, or we can establish one setback with the idea that anybody -- certainly DNR, as the owner of the land, be it public or otherwise, could participate in the variance process.

So in terms of direction to staff and applicant, what would be the predisposition of the board to which DNR could then comment? The 1000 foot, which is the number that has been batted around at least to this point, that's the one contained in the SEPA document, 1000 feet from everybody's build line, and then anybody could participate in the voluntary waiver process. Or we can establish a separate setback from public land.

Which is your predisposition, Commissioner?

COMMISSIONER CRANKOVICH: Well, until you get definite on the legality of the buffer waiver, it would probably be best to approach it from creating a separate setback for public land, as a difference than the buffer created for the 1000 feet from the residential.

COMMISSIONER HUSTON: Commissioner Bowen?

COMMISSIONER BOWEN: One of the oddities about thinking in front of people, I hadn't thought about this before, and the first I heard about it is when Mr. Crankovich brought it up earlier.

So I guess potentially public land could eventually be private land at some point in time, but anybody purchasing it would know that that setback was there. I don't believe tying it to the

variance is a good idea at this point with the information we have, since we don't know if we can even do that. And I guess frankly I don't know that I would change the setback any different than the 487 feet that's proposed at the moment to other boundary lines.

I'm trying to think of what it says exactly. The safety zone setback from utilities, property lines, roads, and KRD. It's still listed in Option 2, unless I wrote that down wrong.

COMMISSIONER CRANKOVICH: I guess what I'm trying to avoid is the assumption that DNR, even though it is public land, is agreeable to everything that goes on or is silent, and then the closer you get to an agreement or reaching an agreement that somebody raises their hand and says, Well, I'm not really sure about that. You know, I just want something clear that everybody knows what's going on.

COMMISSIONER HUSTON: I appreciate that, and I guess maybe in terms -- and again, we play by the rules handed us, so this isn't necessarily the way I would create the world if I were king. But we are in a position where we are dealing with the record that's before us.

Certainly when we go out with a draft document, that reopens it for public comment; DNR at that point can weigh in. What we need to avoid is bringing a representative of DNR and taking additional testimony, creating essentially a supplement to the record to try to deal with the issues that you have. And they're legitimate issues, don't misunderstand me.

But as the orchestrator, if you will, of this process, we have to be somewhat conscious of that. So what I'm looking for -- now, let me say it this way, and I'll borrow the language out of SEPA -- what I'm looking for is the preferred alternative, the preferred language that this board is prepared to go back out to public comment with. In terms of in this case we're talking specifically about setback.

So -- and I guess the fundamental question is do we wish to just use the 1000-foot setback from the build line, essentially Alternative 2 as presented, but apply that to the public lands as well, take comment from that perspective; or does the board wish to create some lesser setback, be it to adhere to the safety setback, or something in between, from public lands. Again, in terms of

preferred alternate, in terms of going back out to the public for comment to a specific proposal.

COMMISSIONER BOWEN: Since this Development Agreement is site-specific, that particular public land, I guess I would -- I'm leaning towards Option 2, obviously. And I think the verbiage in there addresses the concern as long as that 487 feet applies to the boundary line of that DNR property at this point. Off the top of my head.

COMMISSIONER CRANKOVICH: I can agree with that.

COMMISSIONER HUSTON: Okay, it sounds like I have some consensus, then, that the 1000-foot setback from the build line -- and I use the phrase private property -- and then the safety setback, which is identified in the documents as 487 feet from public parcels. Is that --

Now, keeping in mind what we're talking about is the language that we'll go back out for public comment with. So at this point that's the predisposition, if you will, of the board that we're offering for public comment when we have the document put together to go back out. Keeping in mind we always reserve the right to change our mind or to have our minds changed for us, based on public

IN THE STATE OF WASHINGTON

COUNTY OF KITTITAS

KITTITAS COUNTY BOARD OF COUNTY COMMISSIONERS SPECIAL MEETING RE DESERT CLAIM WIND POWER PROJECT.	NO. 2-2003-01

VERBATIM TRANSCRIPT OF PROCEEDINGS

January 27, 2005

6:00 p.m.

Kittitas County Fairgrounds

Ellensburg, Washington

BEFORE THE KITTITAS COUNTY BOARD OF COMMISSIONERS

REPORTED BY:

LOUISE R. BELL, CCR NO. 2676

Exhibit 8

determination if the mitigation measures were in fact appropriate to the project and whether or not the TAC recommendation was appropriate and should be implemented.

At that point, then, as I read the agreement, it would be the responsibility of the applicant to implement those mitigation measures if it was so deemed appropriate by the Board of County Commissioners.

I believe that can take place without a specific amendment to the Development Agreement. It's already called out and identified in terms of the process of how that would be accomplished.

COMMISSIONER HUSTON: Mr. Steeb, would you concur with that recital of the process?

Applicant indicates yes at this point. We'll save you the walk.

Commissioners, other questions?

Please proceed.

MR. PIERCY: Mr. Chairman, for Items 7 and Items 8 I'm going to call on Jim Hurson, Chief Deputy Civil Prosecutor, to address these.

MR. HURSON: Jim Hurson, Deputy Prosecutor.

I guess just backing up on the Item 6 thing. That was one of the issues we discussed staff-wise,

was that enforceability process too. And I think there's a note here about putting in a presumption of, you know, an appropriate remedy or not an appropriate remedy so that you have the proof.

And obviously I think the County's perspective would be if the Director says that this is something that needs to be done, it's -- the presumption is that that is something that needs to be done and then they'd have to prove that that's an inadequate remedy.

You just create burdens and who has the presumption and who doesn't. That makes the contracts easier to enforce and work with, because people understand the roles better.

On the -- Item 7 is setback issue. That -- that's come up in context of the buffer. There's another -- we have been having some discussions about the 1000-foot turbine buffer and, you know, is this supported by the -- the EIS and what is the basis for it.

And in looking at this, what I thought was maybe the thing to do and particularly with having two new commissioners and maybe explain the process. It would probably take me a couple minutes to go through it. But in essence what I hope to show you

is that in your policy role, you have the right to make an assortment of choices here. And basically the EIS is part of that mechanism for you to make those choices.

The 1000-foot buffer, for instance -- and I was going through parts of the document with the EIS. Under Section 3.10.6 that deals with the esthetics of the visual analysis. And this is on visual impacts, which isn't a quality of life issue; it's actually an environment issue.

It's analyzed, they did all sort of studies based upon the quality of the view, the number of people who'll see it, the distance, to figure out what impact it'll have.

And what the EIS found is that the development of project as proposed would result in significant unavoidable adverse impacts to the visual environment, especially for nearby rural residents in the northwest quadrant of the Kittitas Valley.

And what they did is they did some studies from various locations, and four of the locations showed four -- after the analysis that four of them had a high level of visual impact. I think about six had moderate, and then the rest had low. So they tried to quantify those issues as far as the overall

impact.

And the summary part of this said, In summary the degree of long-term visual impacts created by the project would be largely dependent upon location within Kittitas County and proximity to the project. The project would be most apparent in many rural residences in the northwest quadrant of the Kittitas Valley, particularly those with foreground viewing distances approximately one-quarter or one-half mile of large concentration of the wind turbines. The view from most adjacent and nearby residences, the project would be visually dominant due to the size, number, and arrangement of the turbines. In this area the visual impacts would be significant.

And because there's different terms used in here, I looked up -- I actually looked up "dominant" in case that was a question. So the one quarter to one half it said was visually dominant, that's where you had the high impact findings. And dominant, according to Merriam-Webster online, means commanding, controlling, or prevailing over all others, overlooking and commanding from a superior position. So that -- so basically they were saying that.

And then they also went on to say, however, in

this that out to a distance of about three miles, turbines would be prominent from many or most viewpoints but would not dominate the scene.

So during that sort of middle area you have prominent, and prominent would mean standing out or projecting, readily noticeable. So the EIS identified visually dominant high visible impacts in that quarter- to half-mile. Further out you have the prominent, which is less significant.

And so what you have is you have -- the EIS has said you have a -- you have, as proposed, significant unavoidable adverse impacts to the environment.

Now, what that does is it gives you the tools when you make your analysis. Because what -- what SEPA does is its well-established agencies are authorized to deny a project or condition it based upon those that are identified. So you can do that.

And the real question in law is whether there's a duty or not, and there's kind of some questions there. But what you have right here, I think, there's the -- it -- the bottom-line analysis as you go through a lot of the cases, it seems to be that you -- you don't have a duty to deny; you have a choice.

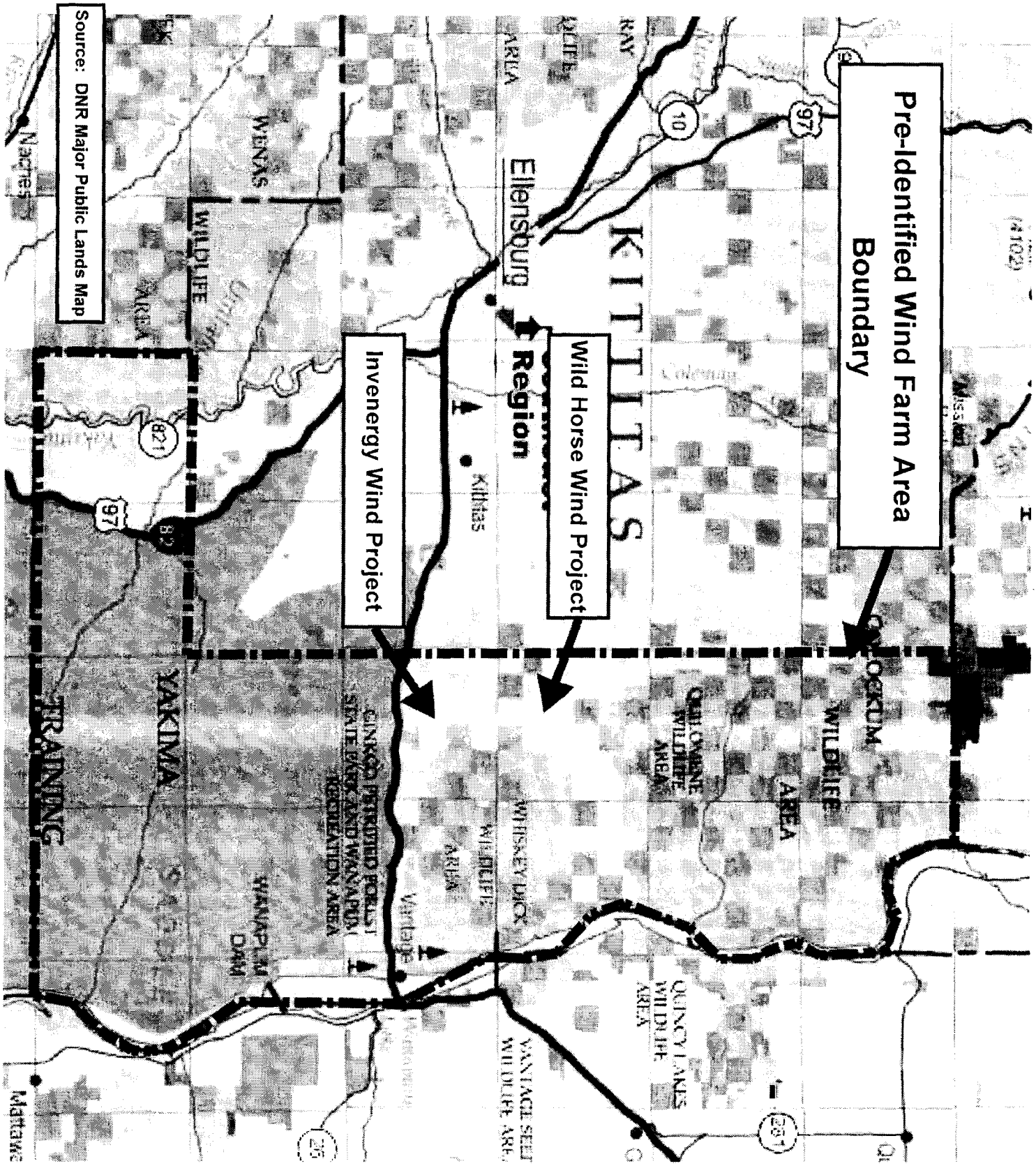
Pre-Identified Wind Farm Area Boundary
Wild Horse Wind Project
Invenergy Wind Project
Region
Ellensburg
KITTITAS
Kittitas
WENAS
WILDLIFE
AREA
YAKIMA
TRAINING
WHISKEY DICK
WILDLIFE
AREA
QUILOMENE WILDLIFE AREA
QUINCY LAKES WILDLIFE AREA
VANTAGE SEED WILDLIFE AREA
GINKGO PETRIFIED FOREST STATE PARK AND WANAPUM RECREATION AREA
WANAPUM DAM
Vantage
Mattawa
Naches
Source: DNR Major Public Lands Map

Exhibit 9