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 arca 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
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.

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
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,
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

DAVID STEEB DECLARATION – 6
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,
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
ture and correct.

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

David Steeb
## EXHIBIT 2

<table>
<thead>
<tr>
<th>Date</th>
<th>Summary of Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 6, 2002</td>
<td>Desert Claim attends pre-application meeting with Kittitas County Community Development Services (CDS).</td>
</tr>
<tr>
<td>September 25, 2002</td>
<td>Desert Claim meets with CDS regarding application and permit process.</td>
</tr>
<tr>
<td>November 14, 2002</td>
<td>Desert Claim meets with CDS regarding application and permit process.</td>
</tr>
<tr>
<td>January 15, 2003</td>
<td>Desert Claim meets with CDS, Building Department and the Public Works Director.</td>
</tr>
<tr>
<td>January 28, 2003</td>
<td>Desert Claim files an application with Kittitas County.</td>
</tr>
<tr>
<td>February 19, 2003</td>
<td>Desert Claim meets with CDS regarding application.</td>
</tr>
<tr>
<td>February 27, 2003</td>
<td>Desert Claim meets with CDS and Washington Department of Fish and Wildlife regarding mitigation issues.</td>
</tr>
<tr>
<td>March 25, 2003</td>
<td>Desert Claim meets with CDS.</td>
</tr>
<tr>
<td>April 8, 2003</td>
<td>Desert Claim meets with County's EIS consultant.</td>
</tr>
<tr>
<td>April 23, 2003</td>
<td>Kittitas County publishes Determination of Significance and EIS Scoping Notice.</td>
</tr>
<tr>
<td>May 7, 2003</td>
<td>Kittitas County holds EIS scoping meeting.</td>
</tr>
<tr>
<td>May 14, 2003</td>
<td>Kittitas County holds Open House and community meeting regarding the Project.</td>
</tr>
<tr>
<td>June 24, 2003</td>
<td>Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS.</td>
</tr>
<tr>
<td>August 12, 2003</td>
<td>Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS.</td>
</tr>
<tr>
<td>September 3, 2003</td>
<td>Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS.</td>
</tr>
<tr>
<td>September 9, 2003</td>
<td>Desert Claim meets with CDS, County attorney and EIS consultant regarding the draft EIS.</td>
</tr>
<tr>
<td>September 24, 2003</td>
<td>Kittitas County holds Open House regarding the Project.</td>
</tr>
<tr>
<td>October 29, 2003</td>
<td>Desert Claim meets with CDS and County attorney regarding the Development Agreement.</td>
</tr>
<tr>
<td>December 1, 2003</td>
<td>Desert Claim meets with County EIS consultant regarding the draft EIS.</td>
</tr>
<tr>
<td>December 15, 2003</td>
<td>Kittitas County publishes the draft EIS.</td>
</tr>
<tr>
<td>January 16, 2004</td>
<td>Desert Claim meets with CDS and Washington Department of Fish and Wildlife regarding mitigation.</td>
</tr>
<tr>
<td>January 20, 2004</td>
<td>Kittitas County holds public hearing on the draft EIS.</td>
</tr>
<tr>
<td>February 10, 2004</td>
<td>Desert Claim meets with CDS, County attorney and EIS consultant regarding the SEPA process.</td>
</tr>
<tr>
<td>March 16, 2004</td>
<td>Desert Claim meets with CDS and Public Works Director regarding airport and Smithson Road issues.</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
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<tr>
<td>May 3, 2004</td>
<td>Desert Claim meets with Public Works Director regarding Smithson Road issues.</td>
</tr>
<tr>
<td>May 4, 2004</td>
<td>Desert Claim meets with Bowers Field Airport Advisory Committee, CDS and Public Works Director regarding airport issues.</td>
</tr>
<tr>
<td>May 26, 2004</td>
<td>Desert Claim meets with CDS and County attorney regarding the EIS.</td>
</tr>
<tr>
<td>June 1, 2004</td>
<td>Desert Claim meets with CDS regarding Pheasant Lane issues.</td>
</tr>
<tr>
<td>June 15, 2004</td>
<td>Desert Claim meets with CDS regarding Pheasant Lane issues</td>
</tr>
<tr>
<td>August 10, 2004</td>
<td>Desert Claim meets with CDS regarding the EIS.</td>
</tr>
<tr>
<td>August 16, 2004</td>
<td>Kittitas County publishes the Final EIS.</td>
</tr>
<tr>
<td>September 13, 2004</td>
<td>Desert Claim meets with CDS regarding the Development Agreement.</td>
</tr>
<tr>
<td>September 16, 2004</td>
<td>Kittitas County publishes a draft Development Agreement for public comment.</td>
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<tr>
<td>September 30, 2004</td>
<td>Desert Claim meets with CDS regarding the Development Agreement</td>
</tr>
<tr>
<td>October 11, 2004</td>
<td>Desert Claim meets with County EIS consultant regarding the Development Agreement.</td>
</tr>
<tr>
<td>October 20, 2004</td>
<td>Desert Claim meets with CDS, County attorney and EIS consultant regarding the staff report and Development Agreement.</td>
</tr>
<tr>
<td>October 25-26, 2004</td>
<td>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.</td>
</tr>
<tr>
<td>October 27, 2004</td>
<td>Kittitas County Planning Commission recommends denial of the Desert Claim Application.</td>
</tr>
<tr>
<td>November 8, 2004</td>
<td>BOCC hearing.</td>
</tr>
<tr>
<td>November 9, 2004</td>
<td>BOCC hearing.</td>
</tr>
<tr>
<td>November 11, 2004</td>
<td>Desert Claim meets with Public Works Director regarding mitigation.</td>
</tr>
<tr>
<td>November 18, 2004</td>
<td>BOCC hearing.</td>
</tr>
<tr>
<td>November 29, 2004</td>
<td>Desert Claim meets with CDS and County attorney.</td>
</tr>
<tr>
<td>December 7, 2004</td>
<td>BOCC hearing.</td>
</tr>
<tr>
<td>December 8, 2004</td>
<td>Desert Claim meets with CDS.</td>
</tr>
<tr>
<td>December 14, 2004</td>
<td>Desert Claim meets with County EIS consultant regarding the Development Agreement.</td>
</tr>
<tr>
<td>December 15, 2004</td>
<td>Desert Claim meets with CDS regarding the Development Agreement.</td>
</tr>
<tr>
<td>December 20, 2004</td>
<td>Desert Claim submits a second revised Development Agreement.</td>
</tr>
<tr>
<td>December 27, 2004</td>
<td>BOCC Hearing.</td>
</tr>
<tr>
<td>January 11, 2005</td>
<td>BOCC Hearing.</td>
</tr>
<tr>
<td>January 20, 2005</td>
<td>BOCC Hearing.</td>
</tr>
<tr>
<td>January 25, 2005</td>
<td>Desert Claim meets with CDS regarding the Development Agreement.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
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<td>--------------------</td>
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</tr>
<tr>
<td>January 27, 2005</td>
<td>BOCC Hearing. Desert Claim submits a third revised Development Agreement.</td>
</tr>
<tr>
<td>February 15, 2005</td>
<td>BOCC Hearing. Desert Claim submits a fourth revised Development Agreement.</td>
</tr>
<tr>
<td>February 16, 2005</td>
<td>Kittitas County publishes the revised Development Agreement for public comment.</td>
</tr>
<tr>
<td>March 1, 2005</td>
<td>BOCC Hearing</td>
</tr>
<tr>
<td>March 9, 2005</td>
<td>BOCC Hearing. At hearing's conclusion, BOCC votes to deny Desert Claim's application.</td>
</tr>
<tr>
<td>March 29, 2005</td>
<td>BOCC Hearing</td>
</tr>
<tr>
<td>Summer-Fall 2005</td>
<td>Desert Claim attempts to contact Kittitas County Commissioners by telephone to discuss possible changes in the Project. Messages are not returned</td>
</tr>
<tr>
<td>November 4, 2005</td>
<td>Kittitas County Superior Court upholds BOCC decision.</td>
</tr>
<tr>
<td>October 24, 2006</td>
<td>Desert Claim meets with each of the Kittitas County Commissioners individually to discuss changes being made to the Project.</td>
</tr>
<tr>
<td>November 6, 2006</td>
<td>Desert Claim files its Application for Site Certification with EFSEC, and hand-delivers copies of the Application to CDS and the Kittitas County Commissioners.</td>
</tr>
<tr>
<td>November 30, 2006</td>
<td>Desert Claim sends a letter to the Commissioners requesting to meet with them to discuss the revised Project.</td>
</tr>
<tr>
<td>December 5, 2006</td>
<td>Commissioner Bowen responds by letter, indicating that the County has &quot;no interest&quot; in &quot;making a decision about the project&quot; outside the process outlined by Kittitas Code chapter 17.61A, but offering to arrange a public information meeting.</td>
</tr>
<tr>
<td>January 30, 2007</td>
<td>EFSEC Land Use Consistency Hearing.</td>
</tr>
<tr>
<td>May 8, 2007</td>
<td>EFSEC grants Desert Claim's motion and rules that Desert Claim is not required to file a new application with Kittitas County.</td>
</tr>
<tr>
<td>May 17, 2007</td>
<td>Desert Claim meets with CDS and County attorney regarding the revised Project, and requests an opportunity to meet with the BOCC.</td>
</tr>
<tr>
<td>May 17, 2007</td>
<td>EFSEC sends a letter to the BOCC encouraging the Commissioners &quot;to use your best efforts to work with the Applicant and to resolve as many issues as possible in advance of any adjudication.&quot;</td>
</tr>
<tr>
<td>May 22, 2007</td>
<td>CDS Director Darryl Piercy letter indicates that the BOCC respectfully declines to meet with Desert Claim.</td>
</tr>
</tbody>
</table>
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
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,

[Signature]

David B. Bowen
Kittitas County Commissioner
District # 1, Chairman
May 22, 2007

David S. Steeh
Project Director
Desert View Wind Power
P.O. Box 4
Woodinville, WA 98072

Dear Mr. Steeh,

Thank you for meeting with Kittitas County staff on May 16, 2007, for a pre-application meeting to discuss the requirements for a new application for the Desert View 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 6 miles north of the city of Ellensburg. You have indicated the project will incorporate 66 power MW2 beta turbines (tower height of 80 meters (263 feet), and a rotor diameter of 125 meters (410 feet) for a total installed capacity of 154 MW. Each turbine has a nameplate generating capacity of 2.3 MW. The project is a federal power project.

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

1. Amendment to the Kittitas County Comprehensive Plan to allow the development of a Sub-area Plan for the proposed site.
2. A review of the project by the Kittitas County Department of Public Works.
3. An Approved Development Agreement.
4. An approved development plan.

In addition, the Energy Facility Site Location Act (EFS) and its resulting federal siting status for this application, EFS requires a new environmental impact statement (EIS) and other environmental review. We have a model of the coordination of this environmental review between EFS and Kittitas County, with the successful application at the Wild Horse Wind Farm Project in which Kittitas County incorporated environmental review under the joint-agency status of EFS.

As we discussed, Kittitas County will not have the capacity to complete the review of the application process and, as such, can make no predictions as to the length of time it will take EFS to complete the draft EIS. Completion of the draft EIS will be necessary prior to Kittitas County conducting public hearings on your application.

Sincerely,

[Signature]
Kittitas County Staff

[Address]

Exhibit 6
In addition to the issues that will be addressed as part 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 features that did not meet the set-back plan requirements
   a. Your new proposal has 10% more connected land area with no disconnected parcels

2. Shadow blaster impacts that were proposed to be mitigated off-site
   a. Your new proposal indicates that individual instances that result in shadow blaster impacts will be shuts 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 has been modified to provide for a set back of 400 feet from the height of the tower of 500 meters. This does not include structures on non-participating land.

Kearny County Staff provided you with the necessary application forms to begin the review process. As has been demonstrated in the case with Wild Horse Wind Power Project, the County process need not be long nor difficult. Completion of this process, as long as sixty weeks, is relatively common, as it is demonstrated with the Wild Horse Project. As discussed earlier, this time frame is the time necessary for NEPA 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 the application being reviewed by and opportunity to be heard directly from the Commissioners. Any concerns of issues that may have arisen during your project. The Commissioners have considered your request and must respectfully decline. We are required to hold a public meeting where some measure of approval or rejection seems to be the proper forum for the community and applicant to believe the Commissioners have considered a specific project without fail and the opportunity for public participation. Such a discussion is best conducted as part of the public review process on your application where the full details of the project are known, and the Commissioners can make reasonable assumptions with County code. We suggest however that Desert Wind conduct a community meeting and that event is open to the community and provide information and respond to specific questions and issues of the public they may have. This effort should provide for the better informed public and a more productive public review regarding your application.

Thank you again for your time in meeting with us. If you have any further assistance in submission of your application please do not hesitate to contact either myself, Vallecito or myself.

Sincerely,

[Signature]

Darrel Piercey
Director

CC: Commissioners
    BSEC
    Honorable Chris Gregoire
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
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 opens 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 NO. 2-2003-01
RE DESERT CLAIM WIND POWER PROJECT

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.