

**SECOND PROGRESS REPORT**

**January 27, 2005**

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

**CC: Darryl Piercy and Jim Hurson**

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

**RE: Desert Claim Wind Power Project Z 2003-01  
Development Agreement**

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On January 11, 2005, we presented to the Board of County Commissioners our progress report regarding a number of issues in the draft Development Agreement for the Desert Claim Wind Power Project. On January 20, 2005, the Board directed staff and the applicant to continue the process of completing the Development Agreement so that it can be circulated for a short public review and comment period. In doing so, the Board provided specific direction on a number of topics.

This is our second progress report to the Board. Below I will explain our progress on each of the topics provided to us by the Board. At this time we also are submitting a revised Development Agreement to the Board. It is attached to this progress report as Exhibit A.

1. Zoning Code Issues. The Board determined in its meeting on January 20, 2005 that the intent of K.C.C. chapter 17.61A is to require all elements of the Desert Claim Project to be considered as a whole in a consolidated review process, with the final decision made by the Board of County Commissioners, not the Board of Adjustment. Consistent with this determination, we revised the Development Agreement in Recital J (addressing the definition of "wind farm" under K.C.C. 17.61A.020) and Section 2.25 (addressing the definition of "Project Substation"). A copy of Recital J is attached as Exhibit B to this progress report and a copy of Section 2.25 is attached as Exhibit C.

2. Fire Services Agreement. The Board directed us to continue working with Kittitas County Fire District No. 2 to obtain a signed Fire Services Agreement for the Project. We are doing so.

As I reported on January 20<sup>th</sup>, we anticipate having a signed agreement by February 11, 2005.

We request that the Board of County Commissioners send the revised Development Agreement out for public review and comment while we are waiting for the Fire Services Agreement to be signed. Previously, the Board of County Commissioners told us that it does not intend to review or dictate the terms of our Fire Services Agreement with District No. 2. Likewise, there is nothing to be gained from having the public comment on a signed Fire Services Agreement. Therefore,

we believe it is appropriate to begin as soon as possible the process of public review of the Development Agreement.

We understand that the Board of County Commissioners will not vote on the Development Agreement until after the Fire Services Agreement is executed. Revisions to the Development Agreement to remove certain references to the Fire Services Agreement are attached to this progress report as Exhibit D.

3. Turbine Buffers and Setbacks. The Board told us that it prefers the language in Alternative Two for turbine buffers and setbacks and that it wants this language circulated for public review and comment. We incorporated that language into the draft Development Agreement; those provisions are also individually set forth in Exhibit E to this progress report.

The Board also asked for additional discussion regarding the Alternative Two provision for voluntary turbine buffer waiver agreements between private property owners and the applicant. Namely, the Board asked whether private parties can waive their rights to the 1,000 foot turbine buffer requirement without subjecting Kittitas County to legal claims for damages or other liability. We believe the answer is "Yes."

First, Alternative Two does not propose that there be any opportunity to vary the 487-foot safety zone setback. Under Alternative Two, the 487-foot safety zone setback will always be maintained from all Project boundaries as well as from public roads, transmission corridors, and the KRD canal. In other words, the safety zone

will always be maintained on the Project site; adjacent property owners will not be asked to restrict their activities or to provide the safety zone on their lands. The only waiver possible would be to reduce the additional distance required to provide the 1,000-foot turbine buffer.

Second, the 487-foot safety zone setback, not the 1,000-foot turbine buffer, was established to protect health and safety. If the larger, 1,000-foot turbine buffer was necessary, the Final EIS would have said so. Figure 3.9-3 in the Final EIS shows that, with the 487-foot safety zone setback, noise levels *at the Project boundary* will not exceed 50-55 dBA. Our voluntary 1,000-foot buffer, as presented in our permit application, was from existing residences as a Project design feature that we included to be a good neighbor. Yes, it lessens noise impacts to those residences. But with the 487-foot safety zone setback, all the adverse noise impacts will occur on the Project site. Neither the EIS nor the Staff Report requires additional buffers to avoid significant adverse impacts to health or safety, including noise impacts. Therefore, the 1,000-foot turbine buffer is not required to protect public health and safety.

The buffer waiver would be accomplished through a legal agreement that will be recorded against the title and bind all future owners of the property. Any future purchaser would be on notice that the right to enjoy a large buffer had been waived—most likely for compensation.

For these reasons, we believe private property owners can agree to a voluntary waiver of this 1,000-foot turbine buffer requirement without subjecting the County to potential liability.

4. Decommissioning. The Board expressed its consensus to move the Development Agreement forward for public review with the language we proposed on January 11, 2005 regarding Project decommissioning. Accordingly, we revised Section 5.11 in the Development Agreement as presented in our first progress report. Another copy of the revised Section 5.11 is set forth in Exhibit F attached to this second progress report.

5. Wildlife Monitoring. The Board asked us to more clearly identify wildlife monitoring and mitigation requirements contained in the Development Agreement. Those monitoring and mitigation requirements are set forth in Exhibit G to this second progress report.

In summary, we are following the Washington State Department of Fish & Wildlife (WDFW) wind farm guidelines. The WDFW guidelines are a state-wide model for wildlife monitoring and mitigation. The WDFW guidelines explain the basis for the monitoring as follows:

As is the case with most development, some mortality of bats and birds is expected to result from wind power Projects. However, it is anticipated that significant impacts to wildlife can be avoided or lessened at most wind Projects if proper pre-Project assessment is implemented and good Project design and management practices are established. Monitoring studies, such as carcass surveys, using current state-of-the-art protocols are required to determine the actual direct impacts of the wind farm on birds.

Under the WDFW guidelines, the goal of monitoring is to enable the permitting agency to adjust mitigation and monitoring requirements based on the results of monitoring data gathered from the Project and other Projects. We included monitoring and mitigation adjustment provisions that are consistent with the WDFW guidelines. The range of possible adjustments, set forth in Section 6.8.6 of the Development Agreement, consists of: (1) increasing or decreasing monitoring requirements; (2) adding research requirements to better understand an impact that is occurring; (3) adding specific mitigation measures to address an impact of the Project (for example, requiring the creation of raptor nesting structures); or (4) developing focused monitoring studies to address industry-wide issues. Because there is no “one-size-fits-all” solution and because monitoring and mitigation are inherently Project-specific, the WDFW guidelines require this range of potential adjustments to be flexible enough to respond to actual conditions and impacts. However, the guidelines do not require relocating, removing, or shutting down any turbines or other Project facilities. Section 6.8 of the Development Agreement further explains how this monitoring process will work, and additionally sets forth specific mitigation requirements for wildlife impacts. A copy of the relevant portions of Section 6.8 is set forth in Exhibit G to this progress report.

6. Shadow Flicker Mitigation. You asked us to be more proactive with respect to mitigation for shadow flicker impacts, and not to rely solely on a complaint resolution process. We incorporated this proactive approach into Section 6.15 of the

Development Agreement. A copy of Section 6.15 is attached to this progress report as Exhibit H.

Under Section 6.15, we will address this issue *before* the Project is completed. Desert Claim will do this by contacting each owner of a residence potentially affected by shadow flicker. We will offer to plant trees to block or screen shadow flicker. In addition, if the homeowner desires, Desert Claim will install shutters, curtains, blinds, or awnings on potentially affected windows. The homeowner could select either option, or both options, all at Desert Claim's expense.

In addition to providing proactive mitigation before the Project is operational, we also included a post-construction complaint resolution process. The complaint resolution process would additionally enable any residents within 2,000 feet, including those who chose not to participate in the pre-operation period, of the Project to complain about shadow flicker through the Complaint Resolution Process and choose the mitigation they deem appropriate from the same range of options. This complaint resolution process would be in place for the life of the Project, thereby providing mitigation options for residents of new homes who may be affected by shadow flicker in the future. The 2,000 foot distance to be eligible for this complaint resolution process comes right out of the EIS.

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The complaint resolution process is set forth in Section 7 of the Development Agreement. A copy of Section 7 is attached as Exhibit I to this progress report.

7. Minor Editing. In the Staff Summary of changes to the draft Development Agreement submitted on January 11, 2005, it was suggested that the Development Agreement be edited to refer only to the Board of County Commissioners and the Director of Community Development Services as the sole County decision makers. We revised the Development Agreement pursuant to these instructions. Exhibit J attached to this progress report shows the specific changes.

Additionally, we revised the Minor and Major Revision provisions of the Development Agreement to better explain how the County will review changes to the Project. These revisions are included in Exhibit K attached to this progress report.

8. Discussion with Staff. Finally, we were asked to meet with County staff to review the topics addressed by the Board of County Commissioners, and to identify any areas of disagreement. We met with staff on Tuesday, January 25, 2005, and discussed each of the topics that the Board asked us to address.

We also met again with Paul Bennett, Director of Public Works, on Wednesday, January 26, 2005 to discuss certain provisions in the Development Agreement. We talked to Paul about the decommissioning section. He told us that he agrees with the amount of the Decommissioning Funds in the Development Agreement. He also told us that he wants us to use the U.S. Dept. of Labor Bureau of Labor Statistics Consumer Price Index as the measure for periodically adjusting the amount of the Decommissioning Funds. We made that change to Section 5.11 of



the Development Agreement you have before you as Exhibit A to this second Progress Report.

We also reviewed the draft Construction Traffic Management Plan and draft right-of-way franchise form our first Progress Report with Mr. Bennett. Additionally, we showed Mr. Bennett the changes we made to Section 6.18 of the Development Agreement regarding the Tourist Kiosk.

Based on our discussion with Mr. Bennett, he told to us that he is satisfied with Section 5.11 as we proposed it, and believes the Development Agreement is ready to be sent out for public review and comment at this time.

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

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