

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

RESOLUTION NO. 2005- 46

**A Resolution Denying the Desert Claim Wind Power Project Proposal Including
Denial of Subarea Designation, Rezone Overlay, Development Agreement and
Development Activities Permit**

WHEREAS Kittitas County ("County") adopted its Comprehensive Plan pursuant to the Washington State Growth Management Act, Chapter 36.70A RCW ("GMA"), by Ordinance 96-10 on July 26, 1996; and

WHEREAS the County amended KCC 17.61 Utility Ordinance and added KCC 17.61A, regarding wind farm development by Ordinance 2002-19 on December 3, 2002. This ordinance provided for a concurrent and consolidated review process for wind farm applications to be heard by the Board of County Commissioners and allowed for the processing of comprehensive plan amendment related to wind farms through a sub-area designation; and

WHEREAS the County amended its Comprehensive Plan by Ordinance 2002-23 on December 19, 2002 including GPO 6.34 which provides: "Wind Farms may only be located in areas designated as Wind Farm Resource overlay districts in the Comprehensive Plan. Such Wind Farm Resource overlay districts need not be designated as Major Industrial Developments under Chapter 2.5 of the Comprehensive Plan."; and

WHEREAS Desert Claim Wind Power LLC ("Applicant") submitted an application for the Desert Claim Wind Power Project on January 28, 2003 seeking approval of all Kittitas County development activity requirements including comprehensive plan amendment, development agreement, rezone, and other permits; and

WHEREAS, Kittitas County reviewed the Project Application in accordance with its applicable County Wind Farm ordinance, KCC 17.61A, which requires for a Wind Farm approval:

- an amendment to the County's Comprehensive Plan to designate the Project area as a Wind Farm Resource District,

- a zoning reclassification for the Project area to a Wind Farm Resource Overlay Zone,
- approval of a wind farm resource development permit, and
- a Development Agreement to set the conditions of approval; and

WHEREAS, a draft Development Agreement was duly published for a thirty day public comment period; and

WHEREAS, the Planning Commission and Board of County Commissioner held a joint public hearing on the Project Application in October of 2004 to hear testimony and receive information from Applicant representatives, county staff and members of the public; and

WHEREAS, the Planning Commission reviewed the documents and testimony in the record and voted unanimously to recommend denial of the project application; and

WHEREAS, during November and December of 2004 the Board of County Commissioners held continued public hearing on the Project Application, to hear testimony and receive information; and

WHEREAS, the 2004 Board of County Commissioners elections resulted in the seating of two new County Commissioners in January of 2005; and

WHEREAS, during January, February and March of 2005 the newly constituted Board of County Commissioners held public hearings on the project proposal; and

WHEREAS, the Board of County Commissioners reviewed the Project Application, Environmental Impact Statement, Applicant's original proposed Development Agreement, SEPA Mitigation Measures, Planning Commission Recommendations, Applicants revised proposed Development Agreements and other documents in the record, and considered Public, Applicant and staff public comment; and

WHEREAS, the Board of County Commissioners on March 9, 2005 resumed its deliberations and unanimously voted to deny the Project Application, including the Wind Farm Overlay Resource District Subarea designation, Wind Farm Zoning Overlay District, Development Agreement and Development Permits, and

WHEREAS detailed Consolidated Findings of Fact and Conclusions At Law for the Desert Claim Wind Power Project are attached hereto and incorporated herein by reference as if set forth in full and support the denial of the Project as proposed.

NOW THEREFORE BE IT RESOLVED that the Board of Kittitas County Commissioners, based upon the record including testimony and exhibits, and in the best

interest of the community, does hereby DENY the Desert Claim Wind Power Project proposal.

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby denies the applicants request to designate the project area as a subarea to the Kittitas County Comprehensive Plan.

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby denies the applicants request to rezone the project area as a Wind Farm Resource Overlay Zoning District.

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby denies the applicants request to enter into a development agreement for the project area under the terms and conditions proposed by the applicant.

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby denies the applicants request for a development permit for the proposed project.

DATED this 5th day of ~~March~~ ^{April}, 2005, at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITITIS COUNTY, WASHINGTON

Perry Huston - Chairperson

David B. Bowen
David B. Bowen - Vice Chair

Alan Crankovich
Alan Crankovich - Commissioner



Janice A. Kyorsnik
Clerk of the Board

APPROVED AS TO FORM:

James Hurson
James Hurson - Deputy Prosecuting Attorney

Findings of Fact and Conclusions at Law

Desert Claim Wind Power Project

1. On January 28, 2003, the applicant Desert Claim Wind Power, LLC, submitted a complete Development Activities Application for:
 - i. An amendment to the Kittitas County Comprehensive Plan utilizing the development of a subarea plan.
 - ii. An amendment to the Kittitas County Zoning Map for a Wind Farm Resource Overlay Zone.
 - iii. County consideration of a proposed development agreement.
 - iv. Development Permit
2. On December 15, 2003, Kittitas County Community Development Services (KCCDS) released a Draft Environmental Impact Statement for public comment.
3. On August 16, 2004, KCCDS issued a Final Environmental Impact Statement (FEIS) with a 30-day appeal period. The FEIS was not appealed by either the applicant or any member of the public.
4. On October 25, 26 and 27, 2004, joint public hearings were conducted by the Kittitas County Planning Commission and Kittitas County Board of County Commissioners. Upon completion of public testimony the Board of County Commissioners continued their hearing leaving open the public record while the Planning Commission closed their record and entered deliberations.
5. On October 27, 2004 the Kittitas County Planning Commission unanimously recommended denial of the application through findings transmitted to the Board of County Commissioners. The planning commission unanimously recommended that the BOCC deny the Desert Claim Wind Farm project proposal in its entirety.
6. Beginning on November 8, 2004, and continued to November 9, 2004, December 7, 2004, December 27, 2004, January 11, 2005, January 20, 2005, January 27, 2005, February 15, 2005, March 1, 2005, and March 9, 2005 the Kittitas County Board of Commissioners held public hearings on the Desert Claim Wind Farm project proposal.
7. On March 9, 2005, the Kittitas County Board of Commissioners voted unanimously to deny an amendment to the Kittitas County Comprehensive Plan utilizing the development of subarea plan, an amendment to the Kittitas County Zoning Map for a Wind Farm Resource Overlay Zone, County consideration of a proposed Development Agreement and a Development Permit thus denying the Desert Claim Wind Farm project proposal in its entirety.
 - a. The Project applicant submitted a Development Activities Application, which included a proposed designation of a sub area as a Wind Farm Resource District. That application was determined complete under Kittitas County Code 15A.03 and the public review process was initiated. Such a designation is inappropriate given the impacts of this project in relationship to nonparticipating property owners, impacts to the surrounding neighborhood, consideration of GPO 6.10, GPO 6.22 & GPO 6.23, and for the reasons set forth below regarding the criteria for rezone.

- b. The Kittitas County Board of Commissioners finds that the Project is not in compliance with all of the criteria for a rezone as required by Kittitas County Code 17.98 and the GMA. The project area is not designated as a Wind Farm Resource Overlay District in the comprehensive plan. GPO 6.34 of the comprehensive plan provides that wind farms may only be located in areas designated as Wind Farm Resource overlay districts in the Comprehensive Plan. A rezone to a Wind farm Resource overlay District would, therefore, be contrary to the comprehensive plan and the requirements of the GMA. The project also fails to meet the underlying rezone criteria. The project proposal does not bear a substantial relationship to the public health, safety or welfare and is incompatible with the surrounding neighborhood. The project area is in close proximity to many individual nonparticipating homeowners and property owners. This area of the county has the character of rural residential and agricultural mixed use. The introduction of turbines of this size and number to this area is incompatible in such close proximity to the current uses. The EIS demonstrates that the project as proposed involves significant, unavoidable, adverse impacts to the visual environment. The mitigation offered to residents who may be affected by shadow flicker required the nonparticipating property owner neighbors to mitigate the impact on the neighbors own property. The project also included other low, medium and significant non-mitigated impacts associated with the project. The Board finds that the Project is not a reasonable development of the subject property given its impacts.
- c. The Kittitas County Board of Commissioners finds that the Project is not in compliance with all of the requirements for a Development Agreement as authorized by Chapter 15A.11 Kittitas County Code and RCW 36.70B.170 through 36.70B.210. The Project did not adequately address the requirement that development standards applicable to the development of a specific wind farm require that impacts be mitigated KCC 15A.11.010. The inability of the Project to adequately mitigate related low, medium and significant non-mitigated impacts associated with the Project and the denial of the rezone to a Wind Farm Resource Overlay Zone renders the Project non-compliant with the requirements for approval of a Development Agreement.
- d. The Kittitas County Board of Commissioners does not find the Project in compliance with all of the requirements for a Development Agreement and therefore denies a Development Permit, which is required for an approved wind farm under KCC 17.61A.
8. Kittitas County Code 17.61A.040 requires that a determination be made that the proposal is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood. The Board is unable to make this determination due to remaining unresolved concerns regarding low frequency noise levels, the visual environment for the nearby rural residents, and the assumption that area residents would have to shade the interior of their homes from shadow flicker from the turbine blades. The Board finds that requiring residents to mitigate an adverse impact caused by the proximity of the Project to existing residences is detrimental to the public health, peace and safety. Location of the Project to a less populated site could negate shadow flicker as an adverse impact to existing residents and thus fully mitigate the issue of shadow flicker. Further, the Board finds that the FEIS identified adverse impacts that could not be mitigated, either on site or off site, due to the proximity of the proposed facility to nearby residences. The FEIS was clear in indicating a minimum of 1/2 mile separation from wind turbines and residences would be necessary to reduce significant adverse impacts to moderate adverse impacts. Even at the middle distance (from 1/2 to 3 miles) the impacts are identified as being moderate and may be subject to further mitigation. The applicant provided no challenge to the FEIS, which identified these unmitigated adverse impacts.

9. Kittitas County Code 17.61A.040 requires that a determination be made that the proposed use at the proposed location (s) will not be unreasonably detrimental to the economic welfare of the county and it will not create excessive public cost for facilities and service. The Board is unable to make this determination due to remaining concerns regarding legal costs, related to the low, medium and significant non-mitigated impacts associated with the project, which may result from approval of the project in the site proposed. Non-mitigated impacts resulting from the location of the proposed project and the proximity of residential development to the project expose the County to legal costs, which may be detrimental to the economic welfare of the County.
10. Based on the Findings of Fact above, the Kittitas County Board of Commissioners concludes that the Development Activities Application determined to be complete on January 28, 2003, submitted by Desert Claim Wind Power, LLC, requesting approval of the Desert Claim Wind Power Project through amendment to the Kittitas County Comprehensive Plan as a designated subarea, an amendment to the Kittitas County Zoning Map for a Wind Farm Resource Overlay Zone, County approval of a development agreement with the Applicant and receipt of a Development Permit from Kittitas County required for approval of a site specific wind farm have not been determined to be in compliance with the criteria necessary for approval and therefore have been denied.