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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

DAVID STEEB DECLARATION – 1

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1 environmental impacts and neighboring land uses, Desert Claim selected a location for its  
2 project, approximately 8 miles northwest of Ellensburg. The original project location is  
3 shown on **Exhibit 1**.  
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6 3. After selecting a location for the project, Desert Claim considered its  
7 permitting options. In 2001, the Legislature had amended EFSEC's statute to allow wind  
8 projects to "opt in" to EFSEC jurisdiction, so Desert Claim had a choice of filing an  
9 application with Kittitas County or with EFSEC. Looking at EFSEC's regulations, we  
10 understood that, if we filed with EFSEC, the Council's proceedings would be stayed while  
11 we tried to obtain County land use approvals. However, if we went through the County  
12 process and obtained County approvals, we would not need to also obtain EFSEC's  
13 approval. We concluded that the most efficient way to proceed was to file an application  
14 with Kittitas County first. If the County did not approve the project, we could file an  
15 application to EFSEC.  
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18 4. Prior to filing our County application, we met with Community  
19 Development Services' planning staff to understand the County process, the application  
20 requirements, and any issues or concerns about the project. After getting input from staff,  
21 we finalized the Project design and prepared the application in a way that would satisfy  
22 existing requirements and address concerns that had been identified.  
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25 5. Desert Claim filed an application with Kittitas County on January 28, 2003,  
26 and the County accepted it as complete the following day. The application described a 180  
27 MW wind power project, with 120 turbines spread out over a 5,237-acre project area.  
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30 6. The County process concerning Desert Claim's application took  
31 approximately twenty-six months. A detailed chronology of the County process is attached  
32 as **Exhibit 2**. The following is a summary. In April 2003, the County issued a SEPA  
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1 Determination of Significance. The County published a Draft EIS in December 2003 and a  
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3 Final EIS in August 2004. In September 2004, Desert Claim developed a "draft"  
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5 development agreement with the planning staff and County attorney. After circulating this  
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7 development agreement to the public, the Kittitas County Planning Commission and the  
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9 Kittitas County Board of County Commissioners (BOCC) held joint hearings on October  
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11 25-26, 2004. At the conclusion of those hearings, the Planning Commission recommended  
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13 denial of Desert Claim's application. For the next five and a half months, the BOCC held a  
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15 series of hearings and meetings to consider Desert Claim's application. After hearings held  
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17 on November 8, November 9 and December 7, 2004, the BOCC asked us to revise the  
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19 development agreement. On December 27, 2004, we submitted a revised development  
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21 agreement, and the BOCC said further revisions might be necessary, and deferred any  
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23 decision until January when two new commissioners would take office. The BOCC held  
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25 meetings on January 11, 20 and 27, 2005, at which we reported on modifications to the  
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27 revised development agreement that we had made based on discussions with the BOCC  
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29 during the January meetings. On February 15, 2005, we presented another revised  
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31 development agreement. The BOCC put this out for public comment and held public  
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33 comment hearings on March 1 and 9, 2005.

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

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41 8. Desert Claim appealed the decision to Superior Court, but the court upheld  
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43 the decision. *Desert Claim Wind Power, LLC v. Kittitas County*, No. 05-2-00243-6, slip.  
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45 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

1 (enXco Development Director Northwest Region), Karen McGaffey and myself.  
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3 Community Development Services was represented by Darryl Piercy (Director), Allison  
4 Kimball (Assistant Director), Joanna Valencia (Planner) and Neil Caulkins (attorney).  
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6 During the meeting, Mr. Piercy explained that three issues led to the BOCC denial of Desert  
7 Claim's original application: (1) inadequate mitigation of potential shadow flicker, (2) the  
8 project configuration over several non-contiguous parcels, and (3) inadequate setbacks from  
9 existing residences. Mr. Piercy indicated that the changes Desert Claim has made to the  
10 Project fully addressed the first two of these issues. However, Mr. Piercy indicated that  
11 Desert Claim's proposal to locate all turbines at least 1,656 feet (four times the turbine  
12 height) from existing residences was inadequate; he believed the BOCC would require a  
13 2,500-foot setback from existing residences unless there are site-specific reasons justifying a  
14 lesser distance. Mr. Piercy stated that he did not believe the County had any other concerns  
15 about the revised Project.  
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27 14. We appreciated Mr. Piercy's candor during our March 17th meeting, and his  
28 willingness to clearly state that he believes the County's only remaining concern about the  
29 Desert Claim Project is the setback from existing residences. However, Mr. Piercy also  
30 acknowledged that a decision to permit the Project under KCC chapter 17.61A would  
31 ultimately be made by the BOCC, not Community Development Services. We, therefore,  
32 asked to meet directly with the BOCC to hear their views about this first-hand. By letter  
33 dated May 22, 2007, Mr. Piercy responded that the BOCC declined our request to meet with  
34 them. Attached as **Exhibit 6** is a copy of that letter.  
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43 15. Although Desert Claim and the County continue to disagree about the  
44 appropriate setbacks from residences, it is an issue that Desert Claim has been attempting in  
45 good faith to resolve since it filed its initial application with the County. In January 2003,  
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