

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

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

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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**.
4

5
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.
16

17
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.
23

24
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.
28

29
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
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

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.
2
3 Community Development Services was represented by Darryl Piercy (Director), Allison
4 Kimball (Assistant Director), Joanna Valencia (Planner) and Neil Caulkins (attorney).
5
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.
16

17
18
19
20
21
22
23
24
25
26
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.
35
36
37
38
39
40
41

42
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,
46
47

1 Desert Claim originally proposed a 1,000-foot setback from existing residences, and in
2
3 2004, Desert Claim submitted various iterations of a Draft Development Agreement to the
4
5 County, each of which proposed a 1,000 setback. At a BOCC hearing on January 20, 2005,
6
7 all three commissioners seemed to accept a 1,000 foot setback from the build line on
8
9 adjacent properties. Commissioner Bowen stated it "doesn't cause me any grief."
10
11 Commissioner Huston said that it was "an acceptable buffer" and that he had "no issue with
12
13 that." Commissioner Crankovich said "I can agree with that." Relevant portions of the
14
15 transcript are attached as **Exhibit 7**. However, on January 27, 2005, County Attorney Jim
16
17 Hurson advised the Commissioners that the turbines could be "visually dominant" from one-
18
19 quarter to one-half mile away. Relevant portions of the transcript are attached as **Exhibit 8**.
20
21 Then in April 2005, the BOCC issued Resolution No. 2005-46, in which it concluded that "a
22
23 minimum of 1/2 mile separation from wind turbines and residences would be necessary to
24
25 reduce significant adverse impacts to moderate adverse impacts." In November 2006,
26
27 Desert Claim filed its EFSEC Application, and configured turbines to ensure that noise
28
29 levels would not exceed 50 dBA at the boundary line of adjoining properties where
30
31 residences were or could be constructed. In this new configuration, the closest residence
32
33 was 1,106 feet from a turbine. Following the Council's decision on the K.V. Project, Desert
34
35 Claim has reconfigured the Project to ensure that all turbines are at least 1,656 (four times
36
37 tip height) from existing residences.

38
39 16. Like most wind power developers, enXco considers several factors in
40
41 identifying potential project sites:

42
43 (a) Wind Resource. The most important factor in selecting a site for a wind power
44
45 project is the available wind resource. enXco was looking for a site with an average wind
46
47 speed of 13 to 17 miles per hour. Potential sites are typically identified using published

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

4 (b) Access to Electrical Transmission. Access to existing electrical transmission
5
6 lines is a significant advantage in wind power project development. Access to nearby lines,
7
8 or in this case, lines that cross the Project itself, avoids or substantially reduces the cost
9
10 associated with constructing new lines, which can range from \$ 500,000 to \$ 1,000,000 per
11
12 mile. The presence of nearby transmission lines avoids the permitting complications of
13
14 constructing new transmission lines, and can eliminate the aesthetic concerns about
15
16 constructing new transmission lines to connect a wind project to the regional transmission
17
18 grid.
19

20 (c) Environmental Constraints. Wind power developers try to avoid areas of
21
22 significant known environmental concerns. Developers try to avoid lakes, rivers, wetlands,
23
24 wildlife refuges, and endangered species habitat.
25

26 (d) Available Real Estate. A commercial wind power development typically requires
27
28 about 5,000 acres of open land. Developers typically look for large, 10,000 to 50,000 acre
29
30 open tracks of land as potential areas for development, and then gradually focus in on
31
32 specific areas. Ultimately, project development requires rights to use the land, therefore, the
33
34 company's ability to negotiate leases with existing property owners is critical to site
35
36 selection.
37

38 (e) Zoning and Land Use Regulations. Wind projects not considered an outright
39
40 permitted use anywhere in the County, but are potentially allowed in all areas zoned A-20,
41
42 Forest and Range, Commercial Forest or Commercial Agriculture.
43

44 17. Desert Claim's parent corporation enXco initially identified the Kittitas
45
46 Valley, extending from Lookout Mountain on the west to the Columbia River on the east,
47

1 and between the National Forest Lands in the north and I-90 in the south as an area worth
2 further investigation. It then looked for large tracts of land and contacted landowners about
3 the possibility of obtaining wind leases. As a result, enXco identified a project area of over
4 5,000 acres owned by eight private land owners located northwest of Ellensburg, and
5 obtained leases for those properties. After performing further on-site meteorological
6 evaluations, we designed the Desert Claim Project at this location and submitted an
7 application to Kittitas County concerning that project area. Since then, Desert Claim has
8 been able to obtain wind leases on DNR land, and has reconfigured the Project to utilize a
9 group of contiguous parcels, removing eastern portions of the original Project area.
10 Although enXco and Desert Claim considered other properties and locations in the County,
11 we were not able to identify other commercially available properties that provided a
12 comparable combination of wind conditions, transmission access and minimal
13 environmental impacts and available land.
14
15
16
17
18
19
20
21
22
23
24
25

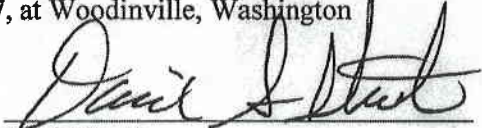
26 18. The Kittitas County Planning Commission and BOCC are currently
27 considering changes in the Comprehensive Plan and zoning code that would designate an
28 area of approximately 500 square miles in the eastern portion of the County as a pre-
29 identified Wind Farm area. **Exhibit 9** is a map of this area proposed for the overlay.
30 Approximately 90% of the land included in the proposed overlay is not available for wind
31 project development because it is either part of the United States Department of Defense's
32 Yakima Training Center or one of several wildlife areas designated by the Washington
33 Department of Fish and Wildlife (the Colockum Wildlife Area, the Quilomene Wildlife
34 Area, the Wenas Wildlife Area and the Whiskey Dick Wildlife Area). Of the remaining
35 land, most is already occupied by the Wild Horse Wind Project or is under lease by one of
36 our competitors, Invenergy, for the possible development of a wind power project. There is
37
38
39
40
41
42
43
44
45
46
47

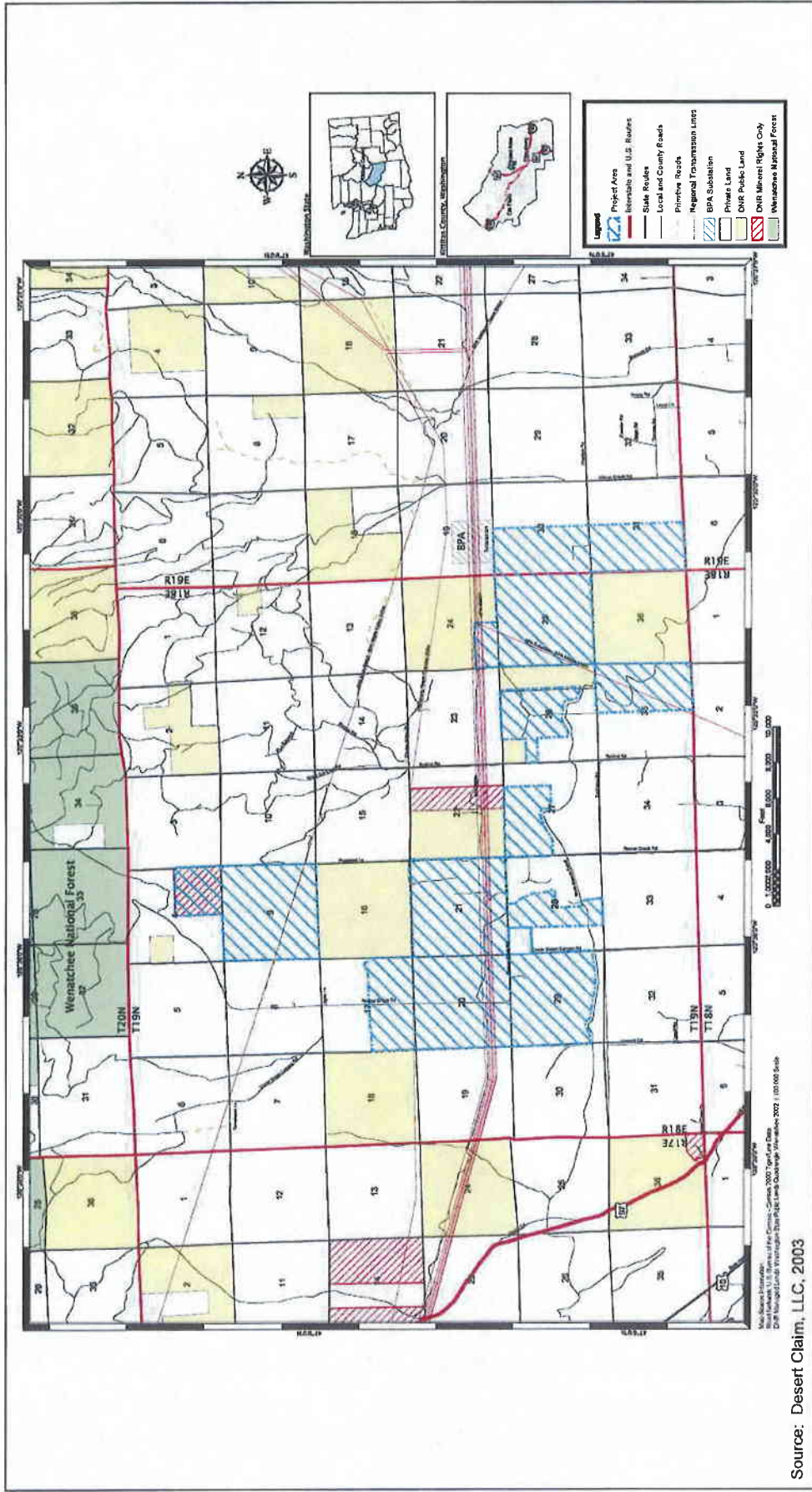
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

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



Source: Desert Claim, LLC, 2003

Huckell/Weinman Associates, Inc.

HWA

Kittitas County
Desert Claim Wind Power Project EIS

Project Vicinity Land Ownership