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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

**STIPULATION BETWEEN
COUNSEL FOR ENVIRONMENT AND
DESERT CLAIM WIND POWER LLC**

I. Introduction

A. Parties

Desert Claim Wind Power LLC ("Desert Claim") has filed an Application for Site Certification with the Energy Facility Site Evaluation Council ("EFSEC" or the "Council") seeking a Site Certification Agreement ("SCA") authorizing it to construct and operate a wind power project (the "Project") on approximately 5,200 acres (the "Project Area") located northwest of Ellensburg in unincorporated Kittitas County. The Project will consist of up to 95 2-megawatt ("MW") wind turbines and associated facilities. Desert Claim filed its Application with the Council on November 6, 2006, and filed a Revised Application on February 6, 2009.

The Counsel for the Environment ("CFE") is a statutory party to the proceedings before EFSEC and is charged with representing the public and its interest in protecting the quality of the environment. RCW 80.50.080.

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2 **B. Identification, Evaluation and Resolution of Issues**
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4 Desert Claim and its consultants have undertaken impact assessments to identify
5 actual and potential impacts to the environment expected from the construction and
6 operation of the Project. In addition, EFSEC has adopted a Final Environmental Impact
7 Statement ("FEIS") published by Kittitas County in 2004 addressing an earlier version of the
8 project proposal, and EFSEC has published a Draft Supplemental Environmental Impact
9 Statement ("SEIS") providing further information and analysis concerning the Project's
10 potential environmental impacts.
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17 The CFE and its consultants have evaluated the information presented in the Revised
18 Application, the FEIS and the Draft SEIS, as well as undertaking their own investigation of
19 the Project Area and other available information. By letter dated May 4, 2009, the CFE
20 submitted comments concerning the Draft SEIS to EFSEC. On May 16, 2009, the CFE
21 circulated a *Preliminary Statement of Issues*, which identified twenty-one possible issues
22 that the CFE might wish to raise during the adjudicative proceeding.
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29 The CFE and Desert Claim (collectively "the Parties") have discussed the issues
30 identified by the CFE, exchanged additional information concerning those issues and agreed
31 upon ways to resolve them. The commitments set forth in this stipulation ("Stipulation")
32 fully resolve the issues identified by the CFE in its *Preliminary Statement of Issues*.
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37 **C. Purpose and Intent**
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39 The Parties agree that this Stipulation is intended to fully resolve all issues identified
40 by the CFE in its *Preliminary Statement of Issues*, dated June 16, 2009. Through this
41 Stipulation, the Parties set forth the obligations, commitments, and restrictions that the
42 Parties intend to have incorporated into the SCA as conditions. These conditions would be
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in addition to any mitigation measures identified in the Revised Application, the FEIS and Final SEIS that EFSEC may impose through the SCA. The obligations and conditions set forth in the Stipulation relate to the construction and operation of the Project as described in the Revised Application. So long as the obligations and conditions outlined in this Stipulation, are included in the SCA, the CFE fully supports the issuance of an SCA for the Project, and the CFE agrees not to recommend or request that EFSEC require any additional mitigation or conditions in the SCA. Neither the CFE nor Desert Claim will advocate any mitigation measures or permit conditions that are inconsistent with those found in this Stipulation in any proceedings concerning the Project.

II. Resolution of Issues

A. Environmental Benefits

The Parties recognize that operation of the Project will have environmental benefits. The Project will generate electricity without the emission of air pollutants and greenhouse gases that result from the generation of electricity at fossil fuel-fired facilities. The Project will generate electricity without the use of significant water resources that are typically associated with thermal generation facilities. The Project will also help to preserve open space and keep rangeland in agricultural use.

The Parties acknowledge that the Project is consistent with Washington State's Energy Policy, which among other things encourages the development of renewable energy resources. RCW 43.21F.015. Increasing generation of electricity from renewable sources, such as wind power, is also an important part of Washington's plan for reducing greenhouse gas emissions. See Washington Departments of Ecology and Community Trade, and Economic Development, *Growing Washington's Economy in a Carbon-Constrained World*:

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2 *A Comprehensive Plan to Address the Challenges and Opportunities of Climate Change* 23
3
4 (Dec. 2008). The Project is consistent with the recommendation of Washington's Climate
5
6 Advisory Team to "increase the level of renewable and alternative energy that can be
7
8 delivered to the electric grid." *Leading the Way: A Comprehensive Approach to Reducing*
9
10 *Greenhouse Gases in Washington State* 55 (Feb. 1, 2008).

11 **B. Technical Advisory Committee**

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13 Desert Claim agrees to form a Technical Advisory Committee ("TAC") as outlined
14
15 in the Washington Department of Fish and Wildlife Wind Power Guidelines (April
16
17 2009) ("2009 WDFW Guidelines").

- 18
19 1. The purpose of the TAC will be to ensure that monitoring data collected
20
21 pursuant to the Avian Monitoring Plan and the Bat Monitoring Plan and other
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23 related monitoring data are considered in a forum in which independent and
24
25 informed parties can collaborate with Desert Claim. The TAC will make
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27 recommendations to EFSEC if it deems additional studies or mitigation are
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29 warranted to address impacts that were either not foreseen in the Revised
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31 Application, the FEIS or the Final SEIS, or significantly exceed the impacts
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33 that were projected in those documents. In order to make advisory
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35 recommendations to EFSEC, the TAC will review and consider the results of
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37 Project monitoring studies, as well as new scientific findings made at wind
38
39 generation facilities with respect to the impacts on habitat and wildlife, as they
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41 may relate to the Project. The TAC will assess whether the post-construction
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43 restoration and mitigation and monitoring programs for wildlife that have been
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45 identified and implemented merit further studies or additional mitigation, taking
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2 into consideration factors such as the species involved, the nature of the impact,
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4 monitoring trends, and new scientific findings.

- 5
6 2. The TAC may include, but need not be limited to, representatives from the
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8 Washington Department of Fish and Wildlife ("WDFW"), U.S. Fish and
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10 Wildlife Service, Audubon Washington or its member chapters, EFSEC,
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12 Kittitas County, Washington Department of Natural Resources ("WDNR"),
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14 and Desert Claim. EFSEC, at its discretion, may add representatives to the
15
16 TAC from local interest groups as well as state, local, federal and tribal
17
18 governments. All TAC members shall be approved by EFSEC.
- 19
20 3. With the exception of WDNR, no representative to the TAC may be party to
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22 a turbine lease agreement or any other contractual obligation with Desert
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24 Claim.
- 25
26 4. Prior to the beginning of the Site Preparation, Desert Claim shall contact the
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28 agencies and organizations listed above in paragraph 2 requesting that they
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30 designate a representative to the TAC, and that the agencies or organizations
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32 notify EFSEC in writing of their TAC representative and of their member's
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34 terms of representation. No later than 60 days prior to the beginning of
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36 Commercial Operation, Desert Claim shall convene the first meeting of the
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38 TAC.
- 39
40 5. No later than 60 days after the beginning of construction, Desert Claim will
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42 submit to EFSEC proposed Rules of Procedure describing how the TAC shall
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44 operate, including but not limited to a schedule for meetings, a meeting
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46 procedure, a process for recording meeting discussions, a process for making
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2 and presenting timely TAC recommendations to the Council, and other
3 procedures that will assist the TAC to function properly and efficiently.
4
5 Desert Claim will provide a copy of the proposed Rules of Procedure at the
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7 first TAC meeting for review and comment. The TAC may suggest
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9 modifications of the Rules of Procedure; any such modifications must be
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11 approved by EFSEC.
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- 13
14 6. The TAC will be convened for the life of the Project, except that EFSEC may
15 terminate the TAC if: the TAC has ceased to meet due to member attrition;
16
17 the TAC determines that all of the pre-permitting, operational and post-
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19 operational monitoring has been completed and further monitoring is not
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21 necessary; or the TAC members recommend that it be terminated. If the
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23 TAC is terminated or dissolved, EFSEC may reconvene and reconstitute the
24
25 TAC at its discretion.
26
27 7. The ultimate authority to require implementation of additional mitigation
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29 measures, including any recommended by the TAC, will reside with EFSEC.
30

31 **C. Townsends Ground Squirrel**

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33 The Townsends Ground Squirrel is a WDFW candidate species. Prior to
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35 commencing construction, Desert Claim agrees to survey the Project site for Townsends
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37 Ground Squirrels and/or their burrows, using a protocol developed in consultation with the
38
39 WDFW. If Townsends Grounds Squirrels are found to exist on the Project site, Desert
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41 Claim will consult with WDFW to determine whether proposed construction activities are
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43 likely to have significant adverse impacts on the Townsends Ground Squirrel population,
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45 taking into account the habitat mitigation being provided by Desert Claim. If Desert Claim
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2 and WDFW conclude that significant impacts are likely, Desert Claim, in consultation with
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4 the WDFW, will develop a plan to implement reasonable and practical mitigation measures
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6 during construction. This Plan shall be subject to approval by EFSEC.

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8 **D. Birds, Including Eagles**

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10 1. The Parties recognize that construction of the Project has the potential to
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12 adversely affect Loggerhead Shrike, Sage Thrasher, and Long-billed Curlews
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14 that may nest in the Project Area during the months of April through June.
15
16 Desert Claim does not agree to avoid or restrict construction activities during
17
18 those months. However, Desert Claim, in consultation with its wildlife
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20 consultant and WDFW will schedule the sequence of construction activities
21
22 and/or locations across the Project Area in a manner that will minimize risks
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24 to these birds during those months to the extent that it is reasonable, practical
25
26 and feasible to do so.
- 27
28 2. Prior to commencing commercial operation, Desert Claim will develop an
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30 Avian Monitoring Plan in consultation with WDFW and submit the plan to
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32 EFSEC for approval. Desert Claim and WDFW will consider the 2009
33
34 WDFW Wind Power Guidelines in developing the Avian Monitoring Plan,
35
36 which will include two years of fatality monitoring involving standardized
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38 carcass searches, scavenger removal trials, searcher efficiency trials, and
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40 reporting of incidental fatalities.
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2 3. The Parties acknowledge that livestock calving has the potential to attract
3 bald eagles to the Project Area. The Parties also acknowledge that the private
4 ranchers who have leased their property for the Project may have no practical
5 location outside the Project Area to conduct calving operations. To address
6 the potential risk this may present to bald eagles, Desert Claim agrees to
7 implement the following mitigation measures:
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13 a. Desert Claim agrees that no calving operations will take place on the
14 portion of the Project that will be owned by Desert Claim or an
15 affiliate. Cattle ranchers who have leased property for the Project
16 may continue conducting calving operations in fenced areas. The
17 approximate location of those areas is shown on the attached figure.
18 Desert Claim will not locate any turbine within the fenced calving
19 areas or within a buffer area equal to the length of a turbine blade plus
20 one hundred feet from the fence line.
21
22 b. Desert Claim will promptly remove carcasses and livestock afterbirths
23 from the Project Area during construction and operation of the
24 Project. Development and implementation of this program shall be
25 done in consultation with WDFW.
26
27 c. In consultation with the CFE and WDFW, Desert Claim will develop
28 a plan to study the behavior of bald eagles during calving operations
29 in the first two years of Project operation. Desert Claim will
30 implement the study plan and present the results of the study to the
31 TAC and EFSEC. The TAC will consider the study results and
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determine whether the calving operations in the Project Area present an unreasonable risk to bald eagles. If so, the TAC will develop recommendations regarding possible additional mitigation measures that may further reduce the risk to bald eagles. Mitigation measures that may be considered include, but are not limited to, modifying the operation of the wind turbines, modifying or moving the calving operations within the Project Area, or removing the calving operations from the Project Area. The TAC will submit its findings and recommendations for mitigation measures, if any, to EFSEC for EFSEC's consideration. EFSEC will have final authority to decide whether to require the implementation of additional mitigation measures addressing this issue.

d. In the event that a bald eagle is killed by a turbine, Desert Claim will report the fatality to EFSEC and the TAC within 48 hours. In the TAC Rules of Procedure, Desert Claim will propose that, within 30 days, the TAC evaluate the available information and consider whether there are additional mitigation measures that should be implemented to reduce the risks to bald eagles and report its findings and mitigation recommendations, if any, to EFSEC.

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2 **E. Bats**
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- 4 1. Prior to beginning commercial operation, Desert Claim in consultation with
5 the WDFW will conduct a bat monitoring survey during the bat migration
6 (late summer and early fall). The survey will utilize current technology and
7 methodology to document bat use of the site, including which if any species
8 are at risk from site operation. Desert Claim will consult with the CFE and
9 WDFW in developing the protocol for the survey. Desert Claim will present
10 the results of the survey to the TAC. If, based on the survey results, the TAC
11 concludes that the Project presents a significant risk to bats that is
12 substantially greater than the risk described in the Final SEIS, the TAC may
13 recommend to EFSEC that additional mitigation measures be required.
14
15 2. Prior to commencing commercial operation, Desert Claim will develop a
16 post-construction Bat Monitoring Plan in consultation with WDFW and
17 submit the plan to EFSEC for approval. The plan will include two years of
18 bat fatality monitoring.
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31 **F. Plants**
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33 Desert Claim will complete a rare plant survey prior to issuance of the Final SEIS. If
34 plants of concern are identified on the Project site and significant adverse impacts to
35 such plants are anticipated, Desert Claim will develop and adopt a Plant
36 Conservation Plan in consultation with the Washington Natural Heritage Program
37 and subject to approval by EFSEC prior to commencement of construction. The
38 CFE reserves the right to submit comments to EFSEC regarding the survey results
39 and any Plant Conservation Plan that may be prepared.
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G. Habitat Impacts

1. Prior to starting construction, Desert Claim will develop a Habitat Restoration and Revegetation Plan in consultation with WDFW and submit it to EFSEC for approval. The Plan will require that all temporarily disturbed areas be reseeded with an appropriate mix of native, locally adapted plant species in a manner and sequence that will maximize the likelihood of successful restoration of the area and prevent the spread of noxious weeds. The Plan will include a pre-identified reference site or sites that Desert Claim, the TAC, and WDFW can use to gauge the success of the habitat restoration and revegetation efforts. WDFW and the TAC may suggest modifications to the initial Plan as new information becomes available.
2. The Parties recognize that newly constructed roads may fragment the existing habitat and increase corridors for predators. In its final design for construction, Desert Claim, in consultation with WDFW, agrees to maximize the use of existing roads and pathways and minimize the construction of new roads as much as reasonable and practical and without disrupting wetlands and other sensitive habitat. This final design shall be subject to approval by EFSEC.
3. Prior to starting construction, Desert Claim will develop a Habitat Mitigation Plan in consultation with WDFW, and subject to approval by EFSEC, based upon the compensatory mitigation ratios outlined in 2009 WDFW Wind Power Guidelines. This plan will include a map identifying habitat types based upon USGS soils maps. The Parties recognize that the final design of

1
2 the Project will vary from the schematic design set forth in the Revised SCA
3 Application. Desert Claim agrees that any compensatory mitigation will be
4 based upon the permanent and temporary habitat disruptions identified in the
5 Final Construction plans. Desert Claim further agrees to increase the
6 compensatory mitigation to reflect actual conditions after construction is
7 completed should the as-built project result in greater temporary or
8 permanent impacts than those shown in the Final Construction plans.
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15 **H. Best Management Practices (BMPs)**

16 Prior to starting construction, Desert Claim will prepare the following plans and
17 submit them for EFSEC's review and approval:
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- 19 1. Construction Site Management Plan
- 20 2. Temporary Erosion and Sediment Control Plan
- 21 3. Construction Stormwater Pollution Prevention Plan
- 22 4. Construction Spill Prevention, Control and Countermeasures Plan
- 23 5. Construction Soil Management and Vegetation Plan
- 24 6. Noxious Weed Control Plan
- 25 7. Construction Emergency Plan
- 26 8. Construction Fire Control and Protection Plan
- 27 9. Construction Traffic Management Plan
- 28 10. Cultural and Archeological Resources Plan

29 These plans will include measures, such as best management practices designed to
30 avoid or minimize potential environmental impacts. Any blasting during
31 construction will comply with state regulations.
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I. Dust Control

During construction and operation of the Project, Desert Claim will use water or a water-based, environmentally safe dust palliative such as lignin, for dust control on unpaved roads during Project construction. Desert Claim agrees not use calcium chloride for dust suppression.

J. Independent Environmental Monitor

Desert Claim agrees to retain a full-time, on-site independent environmental monitor to ensure compliance with the wetland set back requirements, BMPs, and other construction related mitigation measures imposed by this Stipulation and the SCA. During the course of construction, the independent environmental monitor will be responsible for preparing and submitting monthly progress reports to EFSEC regarding adherence to BMPs and the implementation of environmental mitigation plans.

K. Cumulative Impacts

The TAC, or individual members thereof, will be authorized to consult, exchange information, and collaborate with TACs from other wind turbine projects, including the Kittitas Valley Wind Power Project and the Wild Horse Wind Power Project, for purposes of identifying and monitoring cumulative environmental impacts, and, if necessary, developing mitigation recommendations addressing known or newly identified cumulative impacts related to the construction and operation of wind power projects.

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III. Withdrawal of Issues and General Terms

A. Withdrawals of Issues

Upon approval of this Stipulation, the CFE withdraws its issues from the adjudicative hearing, but reserves its right to otherwise participate in the adjudicative hearing process pursuant to the terms herein.

B. Support of Stipulation

The Parties support this Stipulation and fully support the issuance of an SCA for the Project, subject to the conditions set forth in this Stipulation. The Parties understand that this Stipulation is subject to review and approval by EFSEC. The Parties will cooperate in submitting this Stipulation to EFSEC for acceptance, and will support adoption of this Stipulation in proceedings before EFSEC. The CFE reserves the right to attend the hearing and participate in the support and defense of this Stipulation. The CFE also reserves the right to be heard on any issue raised by any other party or any member of EFSEC in the matter that affects the statutory duties of the CFE. The CFE will support certification of the Project and will not advocate any conditions or mitigation requirements in addition to those outlined in this Stipulation. The Parties reserve the right to advocate additional conditions or changes to these conditions during the adjudicative proceedings, if substantial changes are made to the Project or if there is a significant unanticipated change of circumstances.

C. Termination

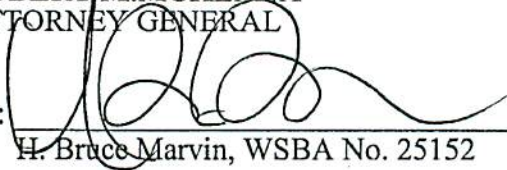
If EFSEC rejects or modifies this Stipulation, the Parties reserve their individual and collective rights to terminate this Stipulation. Before a party exercises its right to terminate this Stipulation, both parties shall use their best efforts to take reasonable actions necessary to re-negotiate this Stipulation in a mutually satisfactory manner.

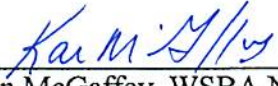
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Dated June 23, 2009.

ROBERT M. MCKENNA
ATTORNEY GENERAL

PERKINS COIE LLP

By: 
H. Bruce Marvin, WSBA No. 25152

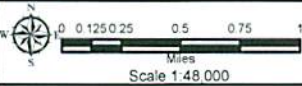
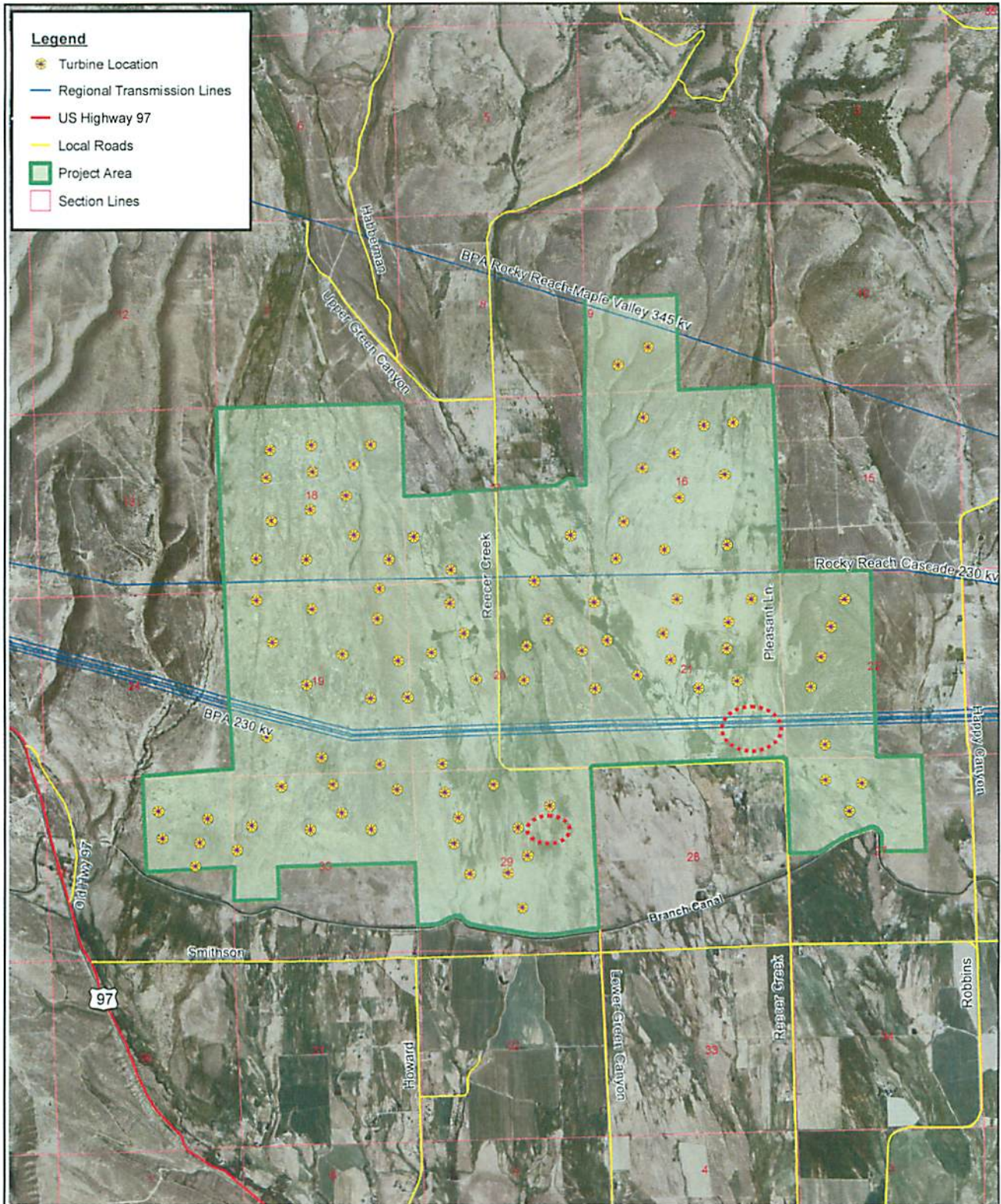
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Attorneys for Applicant
Desert Claim Wind Power



DESERT CLAIM WIND POWER

Kittitas County, Washington

Figure 2
Project Area

Date: 11/7/2008	GIS Analyst: avh
Map Source Information: NAIP 2006 Kittitas County	