

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of:

Application No. 2006-02

DESERT CLAIM WIND POWER, L.L.C.,
L.L.C.

DESERT CLAIM WIND POWER PROJECT

COUNCIL ORDER NO. 825

ORDER ON CONSISTENCY WITH
LOCAL LAND USE PLANS OR ZONING
ORDINANCES

This matter came on and was commenced before a majority of the members of the ENERGY FACILITY SITE EVALUATION COUNCIL (EFSEC or Council) on January 30, 2007, at Ellensburg, Washington, pursuant to Revised Code of Washington (RCW) 80.50.090, Washington Administrative Code (WAC) Chapters 463-26 and 463-28, in order to conduct a public hearing to determine the consistency of the proposed project site with local land use plans or zoning ordinances. This matter was decided at that meeting.

Background and Procedural Matters:

On November 3, 2006, Desert Claim Wind Power L.L.C., a wholly owned subsidiary of enXco Inc., "Desert Claim" or the Applicant herein, submitted application No. 2006-02 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Desert Claim Wind Power Project (herein the "Project"), a 180-megawatt wind turbine electrical generation facility consisting of 90 wind generation turbines. The proposed Project would be located within Kittitas County, roughly 8 miles north of the city of Ellensburg.

On January 12, 2007, the Council issued a Notice of Intent to Hold a Land Use Hearing on January 30, 2007, at 7:00 p.m. at the Kittitas County Event Center (Fairgrounds). The Council convened the hearing, pursuant to Chapter 80.50.090 of the Revised Code of Washington, and Chapter 463-26 of the Washington Administrative Code, for the purpose of determining if the proposed Desert Claim Wind Power Project site is consistent with Kittitas County land use plans and zoning ordinances.

Hearing Procedure:

The following Council members were present: Jim Luce, Chair, Judy Wilson (Department of Natural Resources), Jeff Tayer (Department of Fish & Wildlife), Richard Fryhling (Department of Community, Trade, and Economic Development), and Patti Johnson (Kittitas County), and Tim Sweeney (Utilities and Transportation Commission). Adam E. Torem, Administrative Law Judge of the Office of Administrative Hearings, presided over the hearing. Hedia Adelsman (Department of Ecology) was absent.

Participants:

Representing the Applicant: **Karen McGaffey**, Attorney at Law

Representing Kittitas County: **James Hurson**, Assistant Prosecuting Attorney
Darryl Piercy, Department of Community
Development Services

In addition to the applicant and Kittitas County, twenty-six members of the public testified. Attachment A is the list of those who testified.

The Applicant and the County stipulated that the Project site as proposed is currently inconsistent with local land use plans and zoning ordinances. The applicant did not provide certificates of consistency pursuant to WAC 463-26-090.

Eighty comment letters were received in the EFSEC office and at the January 30, 2007 hearing in Ellensburg, with twenty-seven having comments on land use (including written copies of some of the public testimony), and are hereby entered into the record as land use exhibits, and are incorporated by reference.

Governing Statute and Regulations:

RCW 80.50.090 provides that the Council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with local and regional land use plans or zoning ordinances.

Chapter 463-26 WAC generally provides that the hearing shall be held to determine whether the proposed facility is consistent and in compliance with local land use plans or zoning ordinances.

Chapter 463-28 WAC provides for a process for resolving land use inconsistencies; applications for state preemption of land use plans and zoning ordinances; and Council determination of whether the state should preempt local and regional land use plans or zoning ordinances when an application is not consistent with such plans or ordinances in effect on the date of application.

Council Action Upon Hearing:

Based on the testimony provided, the stipulation of the Applicant and the County, and all other evidence produced at the hearing or timely submitted to EFSEC offices, the Council, having fully considered all such matters, adopts the following Findings of Fact, Conclusions of Law, Determination, and Order:

A. Findings of Fact:

1. Desert Claim and Kittitas County stipulated that the site is not consistent with local land use plans or zoning ordinances in effect as of the date of the application.

2. Kittitas County testified that

a. The proposed location of the Project within Kittitas County is inconsistent with local land use provisions regarding the placement of wind farms in the county, including Kittitas County Code (KCC) Chapter 17.61A.

b. Kittitas County Resolution No. 2005-46 denied the Desert Claim application in 2005 and that denial was upheld by the Kittitas County Superior Court.

3. Additional comment received from the public generally supports the Project's stipulated inconsistency with local land use plans and ordinances.

4. Desert Claim and Kittitas County shall attempt to resolve the land-use inconsistency no later than Monday, April 30th, 2007, or later if mutually agreed by the applicant and the Council as provided in WAC 463-28-040.

B. Conclusions of Law:

1. The Project site is not consistent and in compliance with local land use plans and zoning ordinances. WAC 463-26-110.

2. Pursuant to WAC 463-28-030(1), as a condition to the Council continuing to process this application, the Applicant shall make all reasonable efforts with Kittitas County to resolve the existing land use inconsistencies in the Project application.

3. Pursuant to WAC 463-28-030(2), at the request of the Applicant, all Council proceedings may be stayed during the period when the request for resolution of noncompliance is being addressed with Kittitas County.

4. Pursuant to WAC 463-28-030(3), the Applicant is required to make regular reports to the Council regarding the status of its efforts and negotiations with Kittitas County on land use issues.

C. Determination and Order:

Based upon these Findings of Fact and Conclusions of Law, the Council determines that the Applicant's proposed site is not consistent and in compliance with the land use plans or zoning ordinances of Kittitas County.

Therefore, it is hereby **ORDERED** that the Applicant shall:

1. Make all reasonable efforts with Kittitas County to resolve the existing land use inconsistencies in the Project application as a condition of the Council continuing to process this application.

2. Make monthly reports to the Council at its monthly meetings regarding the status of its efforts and negotiations with Kittitas County on land use issues until at least April 30th, 2007.

In addition, the Applicant may request a stay of Council proceedings during the period when the request for resolution of noncompliance is being processed by Kittitas County.

DATED and effective at Olympia, Washington, the 7th day of March, 2007.

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL

Adam E. Torem, Administrative Law Judge

APPENDIX A

Desert Claim Wind Power Project Land Use Hearing January 30, 2007 Public Testimony List

1. Karen McGaffey - Applicant
2. Darryl Piercy – Kittitas County
3. Lee Bates
4. Jeff Howard
5. David Lee
6. Mark E. Fickes
7. Helen Wise
8. Tina Sands
9. Linda Schantz
10. J.P. Roan
11. David Crane
12. Leslie White
13. Ismael Flores
14. Bertha Morrison
15. Phyllis Whitbeck
16. Sandy Sandall
17. Kirk Deal
18. Mike Gossler
19. Catherine Clerf
20. Rick Forster
21. Steve Kulchin
22. RB (un-readable)
23. Dale Haberman
24. Bill Erickson
25. Andrew Johnson
26. Ron Verhei
27. Jack White
28. Holly Pinkart