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STANDS BEFORE ME, Eric Morris  
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STATING THAT NO CONSIDERATION  
IS BEING PAID.

07/13/2012 12:36:29 PM  
\$99.00  
Agreement SWAUK WIND LLC  
Kittitas County Auditor

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Page 1 of 38



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# Kittitas County Auditor/Recorder's Indexing Form

Please Print Or Type All Information in Black Ink

A. Document Titles (or transactions contained therein):

1 AGREEMENT  
2 \_\_\_\_\_

B. Grantor (last name, first name, middle initial):

1 SWAUK WIND LLC  
2 \_\_\_\_\_  
Additional grantors on page \_\_\_\_\_ of document.

C. Grantee (last name, first name, middle initial):

1 KITTITAS COUNTY  
2 \_\_\_\_\_  
Additional grantees on page \_\_\_\_\_ of document.

D. Legal description (lot, block, plat or section, township, range):

18-19-17  
Additional legal description on page \_\_\_\_\_ of document.

E. Assessor's property tax parcel/account number(s):

\_\_\_\_\_

F. Reference numbers of documents assigned or released:

\_\_\_\_\_

Additional references on page \_\_\_\_\_ of document.

The auditor or recording officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

**DEVELOPMENT AGREEMENT**

**By and between**

**KITTITAS COUNTY, WASHINGTON**

**and**

**SWAUK WIND, LLC**

## TABLE OF CONTENTS

1.	Effective Date, Termination and Modification.....	3
2.	Definitions.....	3
3.	Protect Description.....	5
4.	Vesting.....	5
5.	Development Standards.....	5
6.	Decommissioning.....	7
7.	Consistency with Local Regulations.....	8
8.	Amendments and Revisions.....	8
9.	Termination.....	9
10.	General Provisions.....	9
11.	Notices.....	12
12.	Default and Remedies.....	13
13.	Indemnity.....	14
14.	Entire Agreement.....	14

### List of Exhibits

- Exhibit A: Project Description
- Exhibit B: Project Area, Site and Layout
- Exhibit C: Project Land Legal Description and Landownership Interests
- Exhibit D: Mitigated Determination of Non-Significance
- Exhibit E: Project Vicinity Map with Residence Locations
- Exhibit F: Project FAA 7460 Form 1 determinations

## DEVELOPMENT AGREEMENT SWAUK WIND PROJECT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between Kittitas County, a Washington municipal corporation ("**County**") and Swauk Wind, LLC, a Washington limited liability company authorized to do business in the state of Washington ("**Applicant**"). This Agreement is made pursuant to Revised Code of Washington ("**RCW**") 36.70B.170, Kittitas County Code ("**KCC**") Chapter 15A.11, and KCC Chapter 17.61A, and relates to the Swauk Wind Project.

### RECITALS

A. RCW Chapter 36.70B and KCC Chapter 15A.11 authorize the County to enter into an agreement regarding development of real property located within the County's jurisdiction with any person having an ownership interest in or control of such real property. KCC Chapter 17.61A requires execution of a development agreement as part of the approval process for wind farm projects.

B. The Applicant desires and intends to develop a wind farm in central Kittitas County known as the Swauk Wind Project (the "**Project**") located approximately 12 miles west of the town of Ellensburg, north of State Route 10. A full Project description is contained in Exhibit A.

C. The Project objective is to develop a wind energy facility with a maximum of 5 wind turbines and Project support facilities necessary to generate and deliver renewable energy to point of interconnection with a nearby Puget Sound Energy local distribution line for distribution within Puget Sound Energy's Kittitas County service area.

D. The Applicant has entered into agreements with the owners of the real property comprising the Project Area, giving it control of this land for the purpose of, and authority to, develop the Project.

E. The Project will be located on land referred to herein as the "**Project Area**". A map showing the location of the Project Area is contained in Exhibit B. The Project Area covers approximately 3,865 acres. The land within the Project Area on which the Project itself will be developed is referred to as the "**Project Site**" further shown on Exhibit B. The Project Site legal descriptions and landownership interests are contained in Exhibit C.

F. On June 29, 2011, the Applicant submitted an Application for Comprehensive Plan Amendment – Map Amendment; Development Code Amendment and Wind Farm Siting Application ("**Plan Amendment Application**") to include the Project Area within those areas designated as wind resource overlay areas under KCC 17.61A.040.

G. On September 21, 2011, Kittitas County published in the Ellensburg Daily Record a Notice of Application for the comprehensive plan amendments, development code

amendments, and wind farm siting application and requested SEPA threshold determination comments through October 10, 2011.

H. On September 13, 2011, the Kittitas County Planning Commission (“**Planning Commission**”) conducted a duly noticed open record public hearing on the Plan Amendment Application, and forwarded Findings of Fact, Conclusions of Law and a Recommendation of Approval to the Kittitas County Board of Commissioners (“**BOCC**”).

I. On October 25, 2011, the BOCC conducted its own duly noticed open record public hearing on the Plan Amendment Application. By the BOCC’s adoption of Ordinance 2011-13 dated December 6, 2011, the property was designated as a wind farm resource overlay zone under KCC 17.61A.040.

J. As the State Environmental Policy Act (“**SEPA**”) Lead Agency, Kittitas County issued a Notice of SEPA Action, issuing a Determination of Non-significance (“**DNS**”) for the applications for Comprehensive Plan Amendments, and a Mitigated Determination of Non-significance (“**MDNS**”) for the Project on October 13, 2011. All recipients of the Notice of SEPA Action were requested to contact the county if it did not receive any of the underlying environmental checklist documents identified for each of the following: Comprehensive Plan Amendments, Development Code Amendments and the Wind Farm Siting Application. A copy of the Project MDNS is attached hereto as Exhibit D. Applicant agrees to abide by the Proposed SEPA Mitigation Measures identified in the MDNS as well as the Development Standards set forth in this Agreement to mitigate impacts to the environment.

K. On March 16, 2012, pursuant to KCC 17.61A.040, the applicant submitted a complete Development Agreement Application with a draft project Development Agreement proposing the development standards and criteria under which the Project is to be constructed, operated and decommissioned. All mitigation measures contained in the MDNS are incorporated as conditions to this Agreement. Applicant also submitted a proposed Cost Reimbursement Agreement which obligates the applicant to reimburse the County for its time, fees and expenses reasonably incurred in reviewing and processing the Development Agreement.

L. On April 17, 2012, a Determination of Completeness was issued to the applicant for its request for a Development Agreement. A combined Notice of Application for Development Agreement and Notice of Public Hearing was mailed to affected agencies, adjacent landowners and interested parties on May 3, 2012, and Notice of Hearing was published in the Ellensburg Daily Record and North Kittitas County Tribune on June 7, 2012. The proposed project was the subject of a 30-day comment period.

M. This Agreement establishes the commitments made by the County and the Applicant for the purpose of ensuring that the Project is consistent with the Kittitas County Comprehensive Plan and Zoning code, and to ensure that all final permit approvals will be in the best interests of the citizens of Kittitas County, and will reflect the land use planning considerations of Kittitas County.

N. This Agreement establishes that the development of the Project with the Development Standards and proposed SEPA mitigation measures contained herein is consistent

with the County's Comprehensive Plan, zoning and development regulations, and is compatible with surrounding land uses.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Applicant agree as follows:

## **AGREEMENT**

### **1. Effective Date, Termination and Modification.**

1.1 The Effective Date of this Agreement is the last date upon which it was signed by the Parties hereto.

1.2 Termination. This Agreement shall terminate thirty (30) years from the Effective Date of this Agreement, unless earlier terminated by mutual written agreement of the Parties hereto or by Applicant alone pursuant to Section 9, below.

1.3 Modification. On or after a date which is twenty-five (25) years from the Effective Date of this Agreement, the BOCC shall have the ability to review the Project's compliance with County plans for its airport expansion and the then-current Kittitas County Zoning Code, county development regulations, as well as any other applicable local, state or federal laws or regulations and may request that reasonable modifications be made to the Project to accommodate changes in the County's airport plans or County and other governmental regulations. If there is any conflict with a planned landing approach or facility contained in the then-current Bowers Field Airport Master Plan, the County may require reasonable modifications to the Project to mitigate such conflict, so long as the County Airport Management and the FAA determine in writing that there are no other reasonable alternatives to avoid impact to the Project. Any modifications to the Project as a result this process shall be reflected in an amendment to this Agreement, following applicable public notice and hearing requirements, if any.

### **2. Definitions.**

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

2.1 Agreement. "Agreement" means this Development Agreement between Kittitas County, Washington and Swauk Wind, LLC, approved by the BOCC.

2.2 Applicant. "Applicant" means Swauk Wind, LLC, a Washington limited liability company and the successor-in-interest to Swauk Valley Ranch, LLC, or any of Swauk Wind, LLC's Transferee(s) as provided in Section 10.1 below.

2.3 BOCC. "BOCC" means the Board of County Commissioners of Kittitas County, Washington.

2.4 County. "County" means Kittitas County, Washington.

2.5 Construction Buildout Period. "Construction Buildout Period" has the meaning set forth in Section 5.15 of this Agreement.

2.6 Development Standards. "Development Standards" means the requirements stated in Section 5.

2.7 Effective Date. "Effective Date" has the meaning set forth in Section 1.1 of this Agreement

2.8 FAA. "FAA" means Federal Aviation Administration.

2.9 Force Majeure Event. "Force Majeure Event" means any event that directly prevents or delays the performance by the Party affected of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and actions of a governmental authority with jurisdiction over the Project other than Kittitas County.

2.10 Liability. "Liability" means all loss, damage, cost, expense (including costs of investigation and attorneys' fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to the Project described herein.

2.11 MDNS. "MDNS" means the "Mitigated Determination of Non-Significance" issued by Kittitas County for the Project on October 13, 2011.

2.12 Parties. "Parties" means Kittitas County, Washington and the Applicant, Swauk Wind, LLC, a Washington limited liability company.

2.13 Planning Official. "Planning Official" means the Planning Official of the Kittitas County Department of Community Development Services.

2.14 Project "Project" means the Swauk Wind Project generally consisting of up to 5 Turbines and Project support facilities necessary to generate and deliver electricity as described in Exhibit A, modified as necessary to be consistent with the Development Standards contained herein and the proposed SEPA mitigation measures contained in Exhibit D.

2.15 SEPA. "SEPA" means State Environmental Policy Act.

2.16 Substantial Completion. "Substantial Completion" means the Project is generating and delivering commercial energy to the point of interconnection.

2.17 Transferee. A party to which the Project is transferred or assigned in part or in whole under the provisions contained in Section 10.1 of this Agreement.

2.18 Turbine. "Turbine" means the entire structure that produces electricity. Each Turbine consists of a tower structure anchored to a foundation, a three bladed rotor, and a nacelle housing the generator and other machinery.

### **3. Project Description.**

3.1 The Swauk Wind Project ("Project") generally consists of up to 5 Turbines and Project support facilities necessary to generate and deliver electricity as described in Exhibit A, modified as necessary to be consistent with the Development Standards contained herein and the proposed SEPA mitigation measures contained in Exhibit D.

### **4. Vesting.**

This Agreement vests the Project to the existing County land use plans and regulations effective as of the Effective Date of this Agreement.

### **5. Development Standards.**

5.1 Number of Turbines. Under this Agreement, Applicant shall construct no more than 5 Turbines within the corridors shown on Exhibit B.

5.2 Maximum Turbine Height. The maximum height (measured to the tip of the blade at its highest point to the base of the tower structure) of any Turbine that may be constructed as part of the Project is 300 feet.

5.3 Location and Description of Project. The components of the Project including, but not limited to, Turbines, roadways, electrical collection and transmission system, transformers, and other related Project facilities are described in Exhibit A, and the Project Layout, including Turbine corridors, is illustrated in Exhibit B, which depicts both the Project Area and the Project Site, including the preliminary Project Layout, modified as necessary to be consistent with the following Development Standards and SEPA mitigation measures. Exhibit E illustrates the location of the Project, including Turbines and other necessary Project support facilities in relation to existing residences in the vicinity of the Project. No Turbine may be closer than one-half mile to any residential structure that existed on June 29, 2011. No Turbine shall be located closer than one and one-half times the maximum Turbine height to any



publically accessed road. This does not include those structures or roads which are part of the Project development or operations.

5.4 Fire Protection Plan. Applicant has a pre-existing fire protection services agreement with its local fire district, which plans for effective response to any fires that might occur. This fire protection services agreement shall be maintained for the life of the Project.

5.5 FAA Review. Developers generally must file Notices of Proposed Construction for any structures over 200 above ground level (“AGL”) at least forty-five (45) days prior to commencement of construction in order to facilitate the FAA’s obstruction evaluation and determination that the structures will not present a hazard to air navigation, air navigation instruments or air navigation facilities. Applicant shall timely apply for any FAA DNH’s for any Project structures exceeding the applicable regulatory height threshold and shall provide copies of any issued DNH’s to the Planning Official, demonstrating compliance with filings required by federal aviation regulations.

5.6 Project Access Roads. The Project transportation plan does not contemplate Project equipment delivery trucks crossing or using any county roads. The main Project access road entrance from State Route 10 is the current property access point located on the north side of the roadbed. No improvements to State Route 10 are anticipated to be necessary. However, to the extent improvements to this access point are determined to be necessary to accommodate the Project trucks and equipment deliveries, they shall be constructed to commercial access standards as specified in the WSDOT Design Manual figure 920-5. All internal project roads are private.

5.7 Gravel quarries. Gravel quarries on the site (if any) shall be for on-site use during construction only. The Applicant shall comply with Washington State DNR requirements for gravel pit reclamation.

5.8 Concrete batch plants. Concrete batch plants shall be restricted to on-site use and shall be removed when construction is complete.

5.9 County Right-of-Way. Approval of a franchise for any facilities to be located within County owned right-of-way (including overhead electric power lines) is required.

5.10 Construction Buildout period. Applicant shall be allowed to construct the Project such that Substantial Completion is achieved no later than 5 years from the date that all permits necessary to construct the Project are obtained, but in no event later than 6 years from the Effective Date of this Agreement (the “Construction Build-out Period”); provided however, that such construction is not delayed by a Force Majeure Event. Nothing shall prohibit the Applicant from seeking an extension of the buildout period for good cause shown, approval of which shall not be unreasonably withheld.

5.11 Turbine Setbacks from Structures. A minimum set back of one-half mile shall be maintained between Project Turbines and existing structures located outside the Project boundaries illustrated in Exhibit B; provided however, that the Applicant shall be permitted to place a Turbine within one-half mile of an existing residence if written agreement between the Applicant and the landowner is executed and recorded with the Kittitas County Auditor.

5.12 Safety Setbacks. Notwithstanding any provision herein to the contrary, a minimum safety setback of 1-1/2 times the height of the tower to the tip of the blade will be maintained between Project Turbines and all structures and Project Area boundaries.

**6. Decommissioning.**

6.1 Decommissioning Plan. Prior to commencing construction of the first turbine foundation pursuant to a duly issued building permit, Applicant shall provide to the County for its approval, a Project decommissioning and site restoration plan (“**Decommissioning Plan**”), prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Parties on the date hereof. The Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project site or otherwise protect the public against risks or danger resulting from the Project. The Plan shall be prepared in detail commensurate with the time until decommissioning is to begin.

6.2 Decommissioning Scope and Timing. Applicant or any Transferee, as the case may be, shall decommission the Project within twelve (12) months following the earlier of either: (a) the date of termination of this Agreement, in accordance with Section 1.2 above unless the Applicant has applied to the County for a new Development Agreement authorizing repowering and/or continued operation of the Project at least twelve (12) months prior to the expiration of this Agreement; or (b) after any twelve (12) month period in which the Project fails to generate power, at the written request of the County, ‘Failure to generate power’ is not intended to trigger decommissioning when non-generation is due to Force Majeure Events, including extended low wind periods, or by the need for repair, restoration or improvements to integral parts of the Project provided that the Applicant can demonstrate to the County, in writing if so requested, that such repair, restoration or improvements are being diligently pursued.

6.3 Scope of Decommissioning. The twelve (12) month period to perform the decommissioning may be extended if there is a delay caused by events beyond the control of the Applicant including but not limited to inclement weather conditions, equipment failure, wildlife considerations or the availability of cranes or equipment to support decommissioning. The County shall be granted reasonable access to the Project site during decommissioning of the Project for purposes of inspecting any decommissioning work or to perform decommissioning evaluations. County personnel on the Project site shall observe all worker safety requirements enforced and observed by the Applicant and its contractors. If requested by the County, Applicant will provide monthly status reports until this decommissioning work is completed. Decommissioning the Project shall involve removal of the Turbines; removal of foundations to a depth of 3 feet below grade; regrading the areas around the Project Facilities; removal of Project access roads and overhead cables (except for any roads and/or power cables that Project Area landowners wish to retain); and final reseeded of disturbed lands (all of which shall comprise “Decommissioning”). Decommissioning shall occur in the order of removing the Turbines as the first priority and performing the remaining elements immediately thereafter.

6.4 Decommissioning Funding and Surety. Applicant or any Transferee, as the case may be, shall post funds or security prior to the end of year twenty-five of operations in an amount sufficient for Decommissioning to ensure the availability of said funds (the

“Decommissioning Funds”) to Kittitas County in the event the Applicant or Transferee fails to timely or adequately perform its decommissioning duties herein. The decommissioning funds and surety shall in the form of a guarantee or performance bond or other security device deemed satisfactory to and enforceable by the County that provides for alternative means of securing the decommissioning of the Project, including without limit and by way of illustration, credit to the County, up to the amount of actual decommissioning costs, from the sale of the metal and other Project facilities following decommissioning. Such funds shall remain in place as provided below until decommissioning is completed; provided, however, if a new Development Agreement is entered into between the Applicant and the County prior to the expiration of this Agreement, then the decommissioning provisions of any such new Agreement shall prevail.

6.5 Financial Security and Utility Project Ownership. If, at the time the duty to provide Decommissioning security arises under Section 6.3 above, the owner of the Project is an investor-owned electric utility regulated by the Federal Energy Regulatory Commission (FERC) and the Washington Utilities and Transportation Commission (WUTC), Applicant or any Transferee, as the case may be, shall not be required to obtain and provide proof of financial security for the performance of its Decommissioning obligations arising hereunder, since the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner.

## **7. Consistency with Local Regulations.**

The County hereby acknowledges that if the Project is developed consistent with this Agreement and any Amendments thereto, then all of the following will be deemed true and accurate statements: (1) the public health, safety, and welfare will be adequately protected within the bounds of the law; (2) the Project will be considered essential and desirable to the public convenience; (3) the Project will not be detrimental or injurious to the public health, peace, or safety, or to the character of the surrounding neighborhood; (4) the Project will not be detrimental to the economic welfare of the County; and (5) the Project will not create excessive public cost for public facilities and services.

The Project tax parcels and adjacent tax parcels are zoned as Forest and Range. Unless otherwise agreed to by the applicable landowner pursuant to Section 5.12 above, all Turbines are located more than one-half mile from existing residences owned by non-participating landowners. Due to Project and equipment design, as well as the remoteness of the Project from residential or other development, the Project poses no potential risks to residents from ice throw, blade throw or tower collapse. Other potential impacts such as shadow flicker and noise impacts are also insignificant due to the distance of the Turbines from potential receptors. The Project will deliver commercially distributed energy from a renewable resource and, as such, is essential and desirable to the public convenience. The Project will contribute tax revenues to the County in excess of the limited public service costs the Project will introduce.

## **8. Amendments and Revisions.**

This Development Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and signed by Applicant and the County and is approved by the BOCC (an “Amendment”) following applicable public notice and hearing requirements, if any.

The following sections specify what Project actions and revisions can be undertaken without the need for amendment of the Development Agreement and what revisions require Amendment to the Agreement.

8.1 Project Facility Repair, Maintenance and Replacement. Applicant shall be permitted, without any further approval from the County or amendment to this Agreement, to repair, maintain and replace Project Facilities consistent with the terms of this Agreement.

8.2 Turbine Repair, Maintenance and Replacement. Applicant shall be permitted to repair and maintain the Turbines without any further approval from the County or amendment to this Agreement and to: (i) replace any Turbine with the same make and model Turbine used in the Project (“Replacement Turbine”) so long as the Replacement Turbine meets the Development Standards contained in this Agreement, or (ii) replace any Turbine with a Comparable Turbine in the event Applicant cannot or it is impracticable for it to obtain a Replacement Turbine. “Comparable Turbine” means any wind turbine with physical dimensions not more than twenty percent larger than those originally installed at the Project as indicated in greater detail in Exhibit F; with the same general configuration defined in the Project Description in Exhibit A; in the same location as the Turbine being replaced; and which otherwise meets the Development Standards contained in this Agreement.

## 9. Termination.

Applicant shall have the option, in its sole discretion, to terminate this Agreement prior to commencing any construction including any site grading and excavation work for installation of the Project or its support facilities. If it elects to terminate this Agreement, Applicant shall submit a Notice to this effect to Kittitas County.

## 10. General Provisions.

10.1 Assignment. Applicant shall have the right to assign or transfer all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder; including financial assurance for decommissioning as set forth in Section 6 above, to third parties acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant (each such third party, a “Transferee”), provided such assignments or transfers are made in accordance with the following:

10.1.1 Assignments or Transfers Requiring the Consent of the County. Applicant may at any time enter into a written agreement with a Transferee other than those described in Sections 10.1.2 and 10.1.3 to transfer all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant, including rights, obligations and responsibilities arising hereunder (such agreement, a Transfer Agreement); provided that Applicant obtains the prior written consent of the County as described in this section:

- (a) Such Transfer Agreement shall not take effect unless and until the County has consented in writing to such transfer or assignment, which consent shall not be unreasonably withheld, conditioned, or delayed. Written notice of the proposed Transfer Agreement shall be mailed, first-class, to the County at least sixty (60) days in advance of the proposed date of transfer or assignment. Failure

by the County to respond within sixty (60) days after receipt of a request made by Applicant for such consent shall be deemed to be the County's approval of the Transfer Agreement. The County may refuse to give its consent to a Transfer Agreement only if there is a demonstrated material reason for such refusal, including without limitation, (i) the Transferee's failure to perform material obligations under a similar Development Agreement, or (ii) a failure to demonstrate adequate financial capability, including financial assurance for decommissioning as set forth in Section 6 above, to perform the obligations proposed to be assumed by such Transferee. Applicant shall be responsible for reimbursing the County for all time, fees and expenses reasonably incurred by the County in reviewing and processing any proposed transfer requiring County consent.

(b) Any Transfer Agreement shall be binding on the Applicant, the County and the Transferee. Upon approval of a Transfer Agreement by the County, the Applicant shall be released from those obligations and responsibilities assumed by the Transferee therein.

(c) Applicant shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a Transferee pursuant to an approved Transfer Agreement. No breach or default hereunder by any person that assumes any portion of Applicant's obligations under this Agreement pursuant to an approved transfer shall be attributed to Applicant, nor shall any of Applicant's remaining rights hereunder be cancelled or diminished in any way by any such breach or default.

(d) No breach or default hereunder by Applicant shall be attributed to any person succeeding to any portion of Applicant's rights or obligations under this Agreement, nor shall such Transferee's rights be cancelled or diminished in any way by any such breach or default.

(e) Upon any transfer made in accordance with this Section 10.1.1 to which the County has consented, the Transferee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Applicant shall be automatically released of all liabilities and obligations under this Agreement as to that portion of its interest so transferred or assigned.

10.1.2 Collateral Assignments, without the Consent of the County. Notwithstanding anything herein to the contrary, Applicant or any Transferee shall be permitted to collaterally assign its interest in the Project to a lender providing financing for the Project without the consent of the County, provided that Applicant or any Transferee delivers written notice to the County at least thirty (30) days prior to the date of such collateral assignment and identifies such lender, and maintains financial assurances for decommissioning as required by Section 6 above.

10.1.3 Assignments or Transfers without the Consent of the County. Applicant may transfer or assign all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder, to affiliates of the Applicant, or to third parties

acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant without the consent of the County provided that:

(a) Any non-affiliated third party Transferee is (a) an investor-owned electric utility regulated by the Federal Regulatory Energy Commission ("FERC") and the Washington Utilities and Transportation Commission ("WUTC") or a wholly owned subsidiary of such an investor-owned electric utility, or (b) an entity having, at the time of transfer or assignment, a senior unsecured long term debt rating ("Credit Rating") of (1) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB- or better from Standard and Poor's or (2) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's or (3) if such entity has a Credit Rating from both Standard and Poor's and Moody's, BBB- or better from Standard and Poor's and Baa3 or better from Moody's; or (c) Transferee is an affiliate of the Applicant; and

(b) Such non-affiliated third party Transferee agrees to be bound by the rights, obligations and responsibilities of Applicant hereunder, including financial assurance for decommissioning as set forth in Section 6 above, on and after the date of such transfer or assignment. In the event that Applicant transfers or assigns all or any portion of its interest in and to the Project in accordance with this provision, Applicant shall be released from all obligations or liabilities under this Agreement on and after the date of such transfer or assignment as to that portion of Applicant's interest so transferred or assigned.

10.2 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

10.3 Washington Law. This Agreement is entered into under the laws of the State of Washington, and the parties hereto intend that Washington law shall apply to the interpretation hereof.

10.4 Severability. If any provisions of this Agreement are determined to be unenforceable or invalid, this Agreement shall thereafter be modified, to implement the intent of the Parties to the maximum extent allowable under law and the remainder of this Agreement shall remain unaffected and in full force and effect.

10.5 Authority. Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement

10.6 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

10.7 Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

10.8 Time of Essence. Time is of the essence in the performance of each and every obligation to be performed by the Parties hereto.

10.9 Staffing Agreement for County Project Costs. The Applicant will pay for County costs, including third party consultant costs, if necessary, incurred to support plan review and inspection of the Project during construction, in accordance with K.C.C. 14.04 et al, under a County Staffing Agreement. The Staffing Agreement shall be approved by the Applicant prior to construction, and such approval shall not be unreasonably withheld.

## **11. Notices.**

11.1 Written Notice. Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission.

11.2 Addresses. Notices shall be given to the Parties at their addresses set forth below.

If to the County: Kittitas County Community Development Services  
411 North Ruby Street, Suite 2  
Ellensburg, Washington 98926  
Attn: Planning Official

CC: Kittitas County Prosecuting Attorney's Office  
205 West Fifth, Room 213  
Ellensburg, Washington 98926  
Attn: Neil Caulkins

If to Applicant: Swauk Wind, LLC  
5005 3rd Ave. S.  
Seattle, WA 98134

Attn: Dean Allen

11.3 Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by Notice to the other party may designate a different address or person to which such notice or communication shall be given.

## **12. Default and Remedies.**

No party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

### **12.1 Dispute Resolution Process.**

12.1.1 In the event of any dispute relating to this Agreement, each Party, upon the request of the other Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Applicant shall send an Applicant's representative and any Applicant's consultant with technical information or expertise related to the dispute. The parties shall, in good faith, endeavor to resolve their disputes through the Conference.

12.1.2 Mediation. If this Conference process does not resolve the dispute within the 7 day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within 45 days of the parties submitting the dispute to mediation.

In order to expedite the mediation, during the Conference process the Parties shall select the mediator. The mediator must be a neutral professional full time mediator with time available to meet with the parties within the 45 day mediation period following the 7 day Conference period.

To prepare for mediation, during the 7 day Conference period, the County will select three qualified mediators, as specified above, who are available in the following 45 days. At the end of the 7 day Conference period, if the matter has not been resolved, the Project Owner shall, within the 24 hours of being given the three names select one of the three. The parties will in good faith attempt to resolve the dispute in the 45 day mediation period."



If the dispute is not able to be resolved through the mediation process in the 45 day period, the parties may pursue their legal remedies in accordance with Washington law.

**13. Indemnity.**

The Project owners shall indemnify and hold harmless the County and its elected officials and employees from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever ("Claims") to the extent they are caused by or result from the negligent act or omission of Applicant's employees, officers, or agents in the operation of the Project; provided, however, that indemnification for any the total and cumulative obligation hereunder for all such Claims is limited to and shall not exceed two hundred and fifty thousand dollars (\$250,000). In the event of concurrent negligence, Applicant shall indemnify and hold harmless the County only to the extent of Applicant's negligence, subject to the foregoing limitation for any and all Claims.

**14. Entire Agreement.**

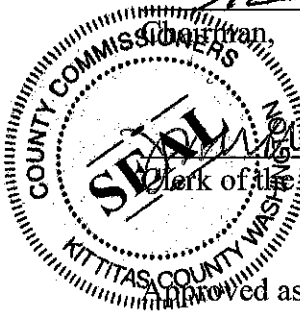
This Agreement, together with all exhibits hereto, constitutes the entire agree between the Parties With respect to the subject matter of this Agreement. Agreement is specifically intended by the Parties to supersede all prior agreements whether written or oral.

APPROVED this 3rd day of July, 20    .

BOARD OF COUNTY COMMISSIONERS  
Kittitas County, Washington

[Signature]  
Chairman,

[Signature]  
Vice Chairman,



[Signature]  
Clerk of the Board, Julie Kjorsvik

[Signature]  
Commissioner

Approved as to form:

\_\_\_\_\_  
Gregory L. Zempel,  
Prosecuting Attorney  
WSBA #19125

SWAUK WIND, LLC

By: [Signature]

Name: DEAN C. ALLEN

Its: MANAGING MEMBER

**EXHIBIT A (TO DEVELOPMENT AGREEMENT)  
SWAUK WIND PROJECT**

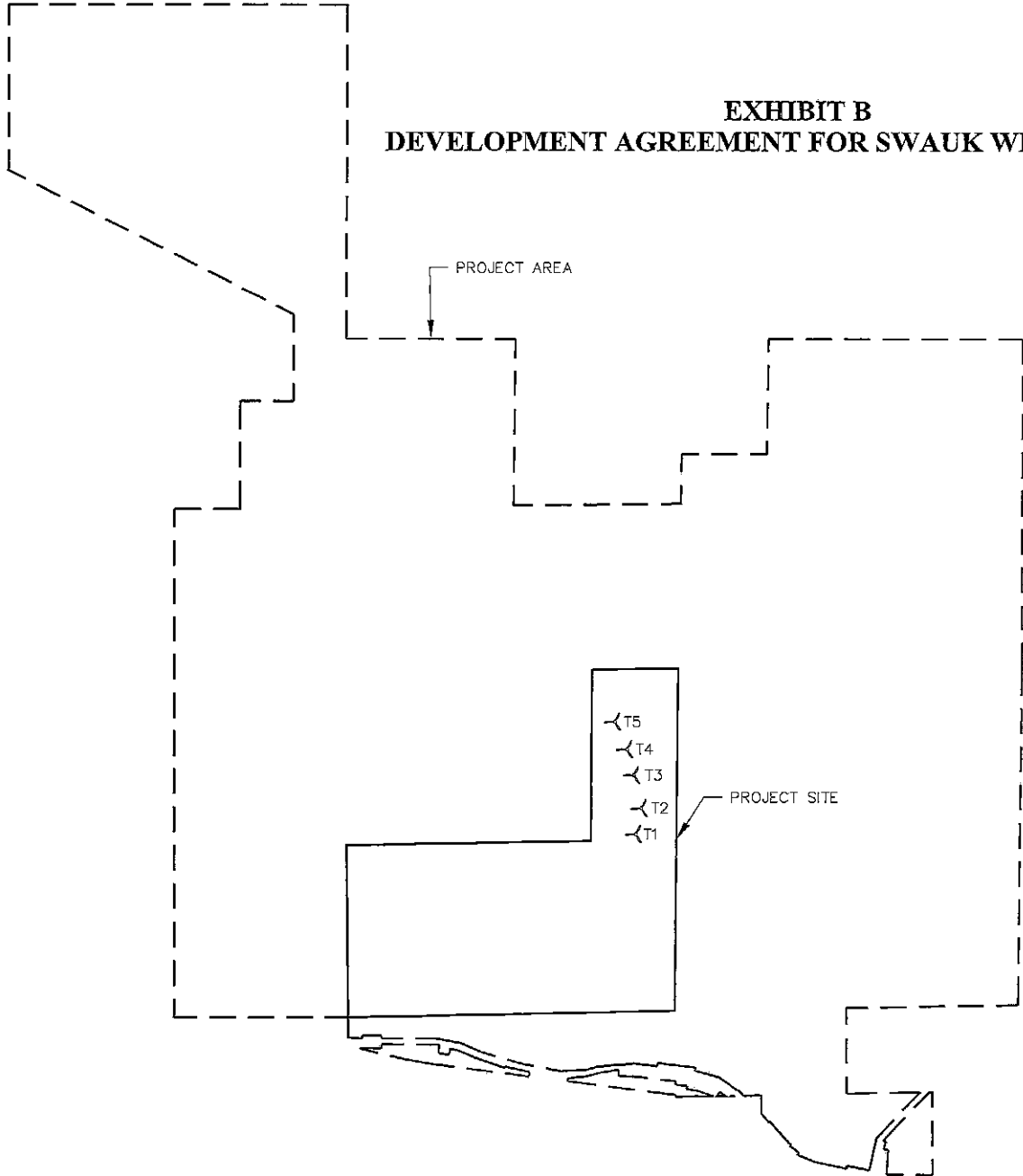
Applicant owns 3,865 contiguous acres in Kittitas County (known as "Swauk Ranch") and would like to install an appropriately scaled renewable energy production system harnessing wind resources on a ~40-acre portion (the "Wind Site") of the Property and Swauk Ranch. Swauk Ranch sources water from a well on-site. Sewage is disposed of on-site as well using a septic system.

Applicant desires to install five (5) wind turbines and generate approximately 4.25 megawatts of power (the "Project"). The turbines will stand approximately 300 ft tall (measured from ground to tip of vertically extended blade) atop a ridge and will be oriented Westerly to take advantage of prevailing winds and will be at least 0.5 mile away from existing structures. The Project is anticipated to be installed between Summer and Fall of 2012 and cause minimal environmental impacts.

The Project will consist of the following infrastructure

- Approximately 25-30 electrical poles
- Five (5) wind turbine generators
- 5 transformers
- Approximately 1.5 miles of fiber optic lines
- Approximately 1.5 miles of copper electrical lines
- One anemometer standing no more than 60 meters in height from ground to top

**EXHIBIT B  
DEVELOPMENT AGREEMENT FOR SWAUK WIND PROJECT**



**EXHIBIT C**  
**(TO DEVELOPMENT AGREEMENT FOR SWAUK WIND PROJECT)**

Applicant owns twenty-four parcels comprised of 3,865 contiguous acres that is collectively known as "Swauk Ranch". Swauk Ranch, LLC, owns all of Swauk Ranch. The five wind turbine generators and appurtenant facilities known as the Swauk Wind Project will be located on the 380-acre Parcel 2 of Tax Parcel Number 19-17-18000-0001 (Assessor's Parcel Number 727734) with the following legal description:

PARCEL 2:

The East Half of the Northeast Quarter, the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 18, Township 19 North, Range 17 East, W.M., in the County of Kittitas, State of Washington;

AND

Government Lots 3 and 4 and the Southeast Quarter of the Southwest Quarter of Section 18, Township 19 North, Range 17 East, W.M., in the County of Kittitas, State of Washington.

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The following page illustrates all parcels owned by Swauk Ranch, LLC.

# SWUAK RANCH PARCELS

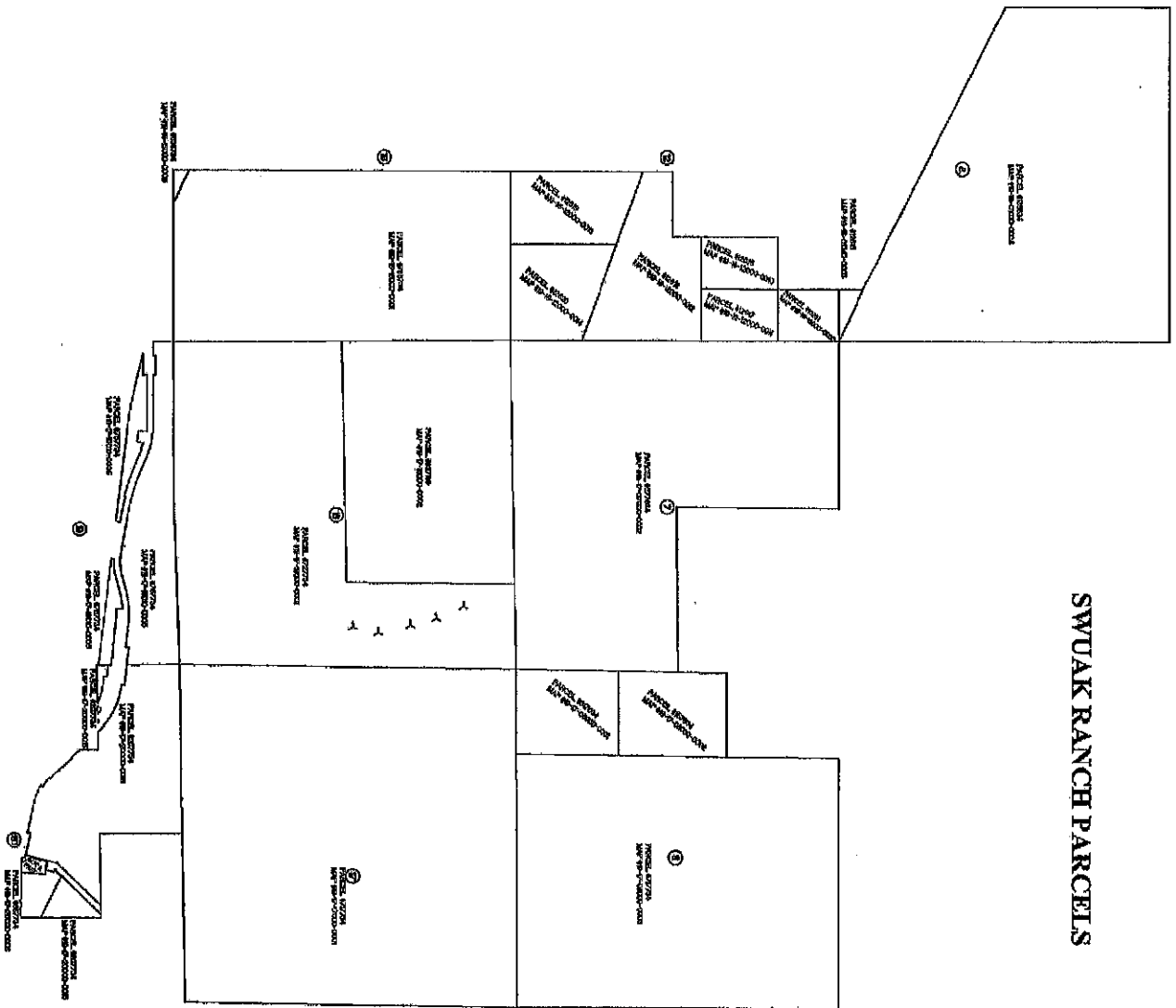




EXHIBIT D  
*(To Development Agreement)*  
KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES  
411 N. Ruby St., Suite 2, Ellensburg, WA 98926  
CDS@CO.KITTITAS.WA.US  
Office (509) 962-7506  
Fax (509) 962-7682

"Building Partnerships - Building Communities"

**NOTICE OF SEPA ACTION**

**TO:** Interested County Departments & Agencies with Jurisdiction  
**FROM:** Dan Valoff, Staff Planner  
**DATE:** October 13, 2011  
**SUBJECT:** 2011 Kittitas County Annual Comprehensive Plan and Development Code  
Amendments - SEPA Environmental Review

Enclosed please find a final Determination of Nonsignificance (DNS) for the referenced proposal and a Mitigated Determination of Nonsignificance (MDNS) for the Swauk Valley Ranch LLC Wind Farm Siting Application. A copy of the submitted environmental checklist and related materials for this proposal were mailed to you for review on September 26, 2011 identifying a comment period through October 10, 2011. If you did not receive any of these documents, or require additional information, please contact our office.

If you have any questions, please contact Dan Valoff, Staff Planner at Community Development Services at (509) 962-7506. Please retain all enclosed materials.



## Final Determination of Nonsignificance

### Description of proposal

2011 Kittitas County Annual Comprehensive Plan and Development Code Amendments.

### Proponent

Kittitas County

### Location of proposal, including street address, if any

Elements of the proposal are countywide.

### Lead agency

Kittitas County

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

Responsible official Dan Valoff

Position/title Staff Planner

Phone. (509) 962-7637

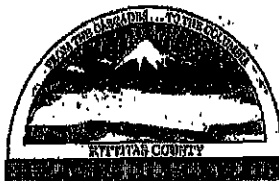
Address and contact information: Kittitas County Community Development Services  
411 North Ruby, Suite #2  
Ellensburg, WA 98926  
(509) 962-7506, (509) 962-7682 fax  
[compplan@co.kittitas.wa.us](mailto:compplan@co.kittitas.wa.us)

Date. 10-13-11

Signature 

There is no agency administrative appeal (KCC 15.04.210 and 15B.05.010).





## KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships - Building Communities"

### STATE ENVIRONMENTAL POLICY ACT (SEPA) MITIGATED DETERMINATION OF NONSIGNIFICANCE

**File:** Swauk Valley Ranch LLC: A Wind Farm Siting Application; pursuant to Kittitas County Code 17.61A.040.

**Proponent:** Alex Cordas, Swauk Valley Ranch LLC  
5005 3<sup>rd</sup> Ave, S  
Seattle, WA 98134

**Location:** 18511 Highway 10, Ellensburg, WA.

**Lead Agency:** Kittitas County Community Development Services

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. The lead agency for this proposal has also determined that certain mitigation measures are necessary in order to issue a Determination of Non-Significance for this proposal. Failure to comply with the mitigation measures identified hereafter will result in the issuance of a Determination of Significance (DS) for this project. These mitigation measures for the project are as follows:

#### 1 EARTH

##### 1.1 Erosion Control during Project Construction

- Before construction begins, the Applicant will apply for coverage under the Washington Department of Ecology's Construction Stormwater General NPDES Permit. The Applicant will develop a detailed SWPPP meeting the requirements of the General Permit.
- The SWPPP would include both structural and non-structural BMPs. Examples of structural BMPs include installation of silt fences and other physical controls to divert flows from exposed soils or otherwise limit runoff and pollutants from exposed portions of the site. Examples of nonstructural BMPs include materials handling protocols, disposal requirements, and spill prevention methods.
- Site-specific BMPs would be identified on the construction plans for site slopes, construction activities, weather conditions, and vegetative buffers. The sequence and methods of construction activities would be controlled to limit erosion. Clearing, excavation, and grading would be limited to the smallest areas necessary to construct the project. Surface protection measures such as erosion control blankets or straw mulching may also be required during construction or before restoration if the potential for erosion is high in a particular portion of the site.
- All construction practices would emphasize erosion control through such measures as:
  - using straw mulch and vegetating disturbed surfaces,
  - retaining original vegetation wherever possible,

- directing surface water runoff away from denuded areas, keeping runoff velocities low by minimizing slope steepness and length, and
- Work on the access roads would include grading and resurfacing (with additional gravel) existing roads and constructing new roads. The site would generally have gravel roadways with a low-profile design, allowing water to flow over them in most areas. Erosion control measures to be installed during work on the access roads include the following:
  - maintaining vegetative buffer strips between the affected areas and any nearby receiving waterways;
  - installing sediment fence/straw bale barriers on disturbed slopes and other locations shown in the SWPPP;
  - installing silt fences on steep, exposed slopes; and
  - planting affected areas with designated seed mixes,
- At each turbine location, a crane pad area would be graded and covered with crushed rock. During construction, silt fences, hay bales, or matting would be placed on the down-slope side of the crane pad. Wind turbine equipment such as blades, tower sections, and nacelles would be transported and off-loaded at each turbine location near the foundation and crane pad. After construction, disturbed areas at and around all crane pad staging areas would be reseeded as necessary to restore the area as closely as possible to its original condition.

## 1.2 Decommissioning Plans

- Prior to commencement of construction, the Applicant will prepare a detailed Initial Site Restoration Plan. The plan shall be developed with the active participation of the County, and shall be submitted to the County for its review and approval.
- If the project were to terminate operations, the Applicant would obtain the necessary authorization from the appropriate regulatory agencies to decommission the facilities.
- All foundations for above-grade facilities would be removed to a depth of 3 feet below grade and unsalvageable material would be sent to authorized sites for disposal. The soil surface would be restored as close as reasonably possible to its original condition.
- Reclamation procedures would be based on site-specific requirements and techniques commonly employed at the time the area is to be reclaimed, and would include regrading, adding topsoil, and reseeding all disturbed areas. Reseeding would be done with appropriate seed mixes, based on native plant types in the project site vicinity. Decommissioned roads would be reclaimed or left in place based on landowner preferences.
- Although no hazardous materials will be used on the site, an audit will be performed of the relevant operation records and a project site survey will be performed to determine if a release of any hazardous material has occurred. An inspection of all facilities will be performed to determine if any hazardous or dangerous materials (as then defined by regulation) are present. The inspection will record the location, quantity, and status of all identified materials
- As part of the decommissioning plan, Permittee shall submit for approval by Kittitas County in collaboration with WDFW and WDOE, a final site restoration plan to ensure proper revegetation of the site when the project ceases operations. The plan shall be prepared by a firm with proven

expertise in restoration. The final site restoration plan shall provide for the return of the project site to pre-project, native habitat in good condition, following removal of turbines and infrastructure.

## 2 VEGETATION AND WETLANDS

- The Applicant shall provide mitigation to all permanent and temporary impacts on vegetation caused by the proposed project in accordance with the guidelines outlined in the WDFW Wind Power Guidelines (WDFW, August 2003) for siting and mitigating wind power projects east of the Cascades. These guidelines include implementing a WDFW approved restoration plan for the impacted areas that will include:
  - site preparation,
  - reseeding with appropriate vegetation,
  - noxious weed control, and
  - protection from degradation.
- Best management practices (BMPs) will be implemented during construction to control erosion and surface water runoff, and as presented below for noxious weed control.
- The applicant will use BMPs during construction to minimize impacts to surrounding habitat and facilitate habitat restoration.
- The applicant will prepare a weed control plan. Specific mitigation measures to be included in the plan will include the following:
  - The contractor will clean construction vehicles prior to bringing them in to the project area from outside areas.
  - Disturbed areas will be reseeded as quickly as possible with native species.
  - Seed mixes will be selected in consultation with WDFW and Kittitas County Weed Control Board.
  - If hay is used for sediment control or other purposes, hay bales will be certified weed free.
  - Access to the site will be controlled which may result in a lower level of disturbance and fewer opportunities for noxious weeds to be introduced and/or spread.
  - Noxious weeds that may establish themselves as a result of the project will be actively controlled in consultation with the Kittitas County Weed Control Board.

## 3 Wetlands

Since no impacts on wetlands are anticipated, no mitigation is proposed. During the design of the project, all project facilities, including access roads, electric lines, and turbine strings, were intentionally laid out to avoid the limited water features in the project area.

## **4 WILDLIFE**

### **4.1 Study and Analysis**

Studies shall be conducted on the project site by qualified wildlife biologists and data gathered was used in the project design to avoid impacts on sensitive populations. These studies include the following:

- Rare plant surveys;
- Habitat mapping;
- Avian use point count surveys;
- Aerial raptor nest surveys;
- Big game surveys;
- Non-avian wildlife surveys;

The results and recommendations of these studies shall be incorporated into the proposed design, construction, operation and mitigation for the project.

### **4.2 Project Design**

The proposed design of the projects shall incorporate features to avoid and/or minimize impacts on plants and wildlife. These features shall be based on site surveys, experience at other wind power projects, and recommendations from consultants performing studies at the site. Features of the project that are designed to avoid or minimize impacts on wildlife include the following:

- Avoidance of construction in sensitive areas such as streams, riparian zones, wetlands, and forested areas;
- Minimization of new road construction by improving and using existing roads and - trails instead of constructing new roads;
- Use of unguyed permanent free-standing meteorological towers to minimize potential for avian collisions with guy wires where possible;
- Equipping all overhead power lines with raptor perch guards to minimize risks to raptors;
- Spacing of all overhead power line conductors to minimize potential for raptor electrocution;
- The towers will not have open platforms that could be used for perching or nesting; and,
- Ensure spacing of all overhead power line conductors shall minimize the potential for raptor electrocution. Overhead transmission lines shall incorporate the design guidance in the APLIC guidelines to minimize the risk of electrocution of birds.

### **4.3 Construction Techniques**

Construction of the project has the potential to impact both habitat and wildlife in a variety of ways. The project shall use construction techniques and BMPs to minimize these potential impacts. These include the following:

- Use of BMPs to minimize construction-related surface water runoff and soil;
- Use of certified "weed free" straw bales during construction to avoid introduction of noxious or invasive weeds;
- Flagging of any sensitive habitat areas (e.g., springs, raptor nests, wetlands) near proposed areas of construction activity and designation of such areas as "off limits" to all construction personnel;
- Development and implementation of a fire control plan, in coordination with local fire districts, to minimize risk of accidental fire during construction and respond effectively to any fire that does occur;
- Proper storage and management of all wastes generated during construction;
- Require construction personnel to avoid driving over or otherwise disturbing areas outside the designated construction areas;
- Designation of an environmental monitor during construction to monitor construction activities and ensure compliance with mitigation measures.
- Construction work limits shall be staked prior to any clearing or construction. Staking shall be clearly visible to equipment operators. Vegetation clearing shall be limited to the actual construction footprint within the project limits to the greatest extent possible.
- Underground cables will be placed around roadways to the greatest extent possible. Where appropriate conserved soil from the construction of the project shall be applied over the trenched areas to encourage re-vegetation.
- The proponent shall be required to prepare the following plans:
  - Fire Protection Plan which includes measures for minimizing the likelihood of fire starts and measures to detect and quickly suppress wildfire.
  - Construction Stormwater Pollution Prevention Plan (SWPPP). The SWPPP shall be reviewed by the project's revegetation contractor with expertise with shrub steppe restoration.
  - Construction Spill Prevention, Control and Countermeasures Plan to address spills of fuel, lubricants and other harmful materials on hardened areas of the facility and in shrub steppe areas in a manner which minimizes long-term impacts to vegetation and wildlife habitat.
- Project operation shall include conservation measures for managing risk to scavenging birds of prey including eagles, vultures and ravens. Such measures shall include removal of big game and livestock carcasses within the project boundary which could attract eagles and other avian scavengers to the project.

## 5 Operational BMPs

During project operations, appropriate operational BMPs will be implemented to minimize impacts on plants and animals, these include the following:

- Implementation of a fire control plan, in coordination with local fire districts, to avoid accidental wildfires and respond effectively to any fire that might occur;
- Operational BMPs to minimize storm water runoff and soil erosion from project facilities;
- Implementation of an effective noxious weed control program, in coordination with the Kittitas County Noxious Weed Control Board, to control the spread and prevent the introduction of noxious weeds;
- Identification and removal of all carcasses of livestock, big game, etc. from within the project that may attract foraging bald eagles or other raptors;

## 6 ENERGY AND NATURAL RESOURCES

As the project would have a positive impact overall on the use of non-renewable resources, no mitigation is necessary or proposed.

During construction, conservation measures will include recycling of construction wastes where possible and encouraging carpooling among construction workers to reduce emissions and traffic.

## 7 NOISE

Although no specific receivers are identified as being impacted by construction noise at the remote project site, and the Applicant has not proposed any mitigation measures associated with noise impacts, the following contractor practices are recommended to minimize the effects of construction noise in the project area:

- Implement work-hour controls so that noisy activities occur between 7 a.m. and 10 p.m., which would reduce the impact during sensitive nighttime hours.
- Conduct any blasting only during daylight hours.
- Maintain equipment in good working order and use adequate mufflers and engine enclosures to reduce equipment noise during operation.

## 8 LAND USE.

- After construction is completed, disturbed areas would be returned as closely as possible to their original state, excluding service and access roads, which would remain in place for the life of the facility.
- In addition to the development agreement required under county code, the applicant shall enter into a staffing agreement with Kittitas County to reimburse the cost of Project Management during and after construction.

## 9 VISUAL RESOURCES/LIGHT AND GLARE

Applicant shall incorporate appropriate mitigation measures into the project's design to include the following:

- Active dust suppression will be implemented to minimize the creation of dust clouds during the construction period.
- Areas temporarily disturbed during the construction process will be reseeded to facilitate their return to natural-appearing conditions when construction is complete.

- The wind turbine towers, nacelles, and rotors used will be uniform and will conform to the highest standards of industrial design to present a trim, uncluttered, aesthetically attractive appearance.
- A low-reflectivity finish will be used for all surfaces of the turbines to minimize the reflections that can call attention to structures in a landscape setting.
- The only exterior lighting on the turbines will be the aviation warning lighting required by the FAA. This lighting will be kept to the minimum required intensity to meet FAA standards. It is anticipated that the FAA will soon be issuing new standards for marking of wind turbines that will entail lighting fewer turbines in a large wind farm than is now required, as well as synchronizing all the lights. These potential regulatory changes are being closely monitored and if, as is likely, they are made before project construction begins, the aviation safety marking lighting will be designed to meet these revised standards.

## 10 CULTURAL RESOURCES

The mitigation measures are described below.

- Ground disturbing actions within a specified radius of any archaeological sites, either recorded during the initial survey or previously documented, will be monitored by a professional archaeologist to prevent damage or destruction to both known and unanticipated archaeological resources.
- If any archaeological materials, including but not limited to human remains, are observed, excavation in that area will cease, and Washington State Department of Archaeology and Historic Preservation (DAHP), the County, the affected tribes and the Applicant will be notified. At that time, appropriate treatment and mitigation measures will be developed and implemented. If the project cannot be moved or re-routed to avoid resources, the resources will be tested for eligibility for listing in the NRHP. Any excavation or disturbance to the archaeological sites will require an excavation permit from Washington State Department of Archaeology and Historic Preservation (DAHP) per RCW 27.53.060. The archaeologist will remove any flagging tape or pin flags at the end of the construction-monitoring phase of the project.
- If a tribe requests to have one of their representatives present during earth-disturbing construction activities, the Applicant will comply with their wishes. In all cases, the project shall note all concerns raised through tribe requests.
- The Applicant will survey project areas, including staging and final access road alignments, etc. Surveying will be conducted early in the design phase to allow for final modifications to the project to avoid cultural resources and for Washington State Department of Archaeology and Historic Preservation (DAHP) to review and approve the survey. ;
- The applicant shall prepare a written monitoring plan of methods, expectations, and procedures to follow in the event of discovery. The monitoring plan will developed following protocols that have been successfully applied for other wind energy projects (e.g., Wild Horse & Vantage Wind) in Kittitas County.

## 11 TRAFFIC AND TRANSPORTATION

- The Applicant will prepare a Traffic Management Plan (to be submitted to Kittitas County Public Works and Washington State Department of Transportation (WSDOT) prior to construction for review), with the construction contractor outlining steps for minimizing construction traffic impacts;

- All traffic control requests affecting state highways must be coordinated and approved through WSDOT South Central Region's Traffic Engineer. The applicant shall submit a traffic control plan to the Traffic Office for review and approval.
- The applicant shall provide a roadway pavement analysis and visually inspect the condition of pavement and the quantity and severity of pavement distresses utilizing an accepted rating system.
- The Applicant will construct necessary site access roads and an entrance driveway that will be able to service truck movements of legal weight and provide adequate sight distance.
- The Applicant will employ flaggers as necessary to direct traffic when large equipment is exiting or entering public roads to minimize risk of accidents;
- All loads transported on WSDOT rights-of-way must be within the legal size and load limits, or have a valid oversize and/or overweight permit, if allowed. Once the transportation trucks for the project are known, WSDOT shall be notified of the length, turning radius and overheight dimensions.

**12 Compliance with Standards**

The wind turbines for the proposed project would meet international engineering design and manufacturing safety standards including the International Electrotechnical Commission standard 61400-1: Wind Turbine Generator Systems—Part I: Safety Requirements.

**13 Aircraft Impact**

The project facilities would be marked and lighted in accordance with FAA regulations to minimize the potential for a low-flying aircraft to collide with a structure.

This MDNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the MDNS.

Responsible  
Official:

  
\_\_\_\_\_  
Dan Valoff

Title: Staff Planner

Address: Kittitas County Community Development Services  
411 North Ruby St., Suite 2  
Ellensburg, WA 98926  
(509) 962-7506 FAX 962-7682

Date: October 13, 2011

There is no agency administrative appeal (KCC 15.04.210 and 15B.05.010).



EXHIBIT E  
DEVELOPMENT AGREEMENT FOR SWAUK WIND PROJECT



R2640.00'

PROJECT  
PARCEL

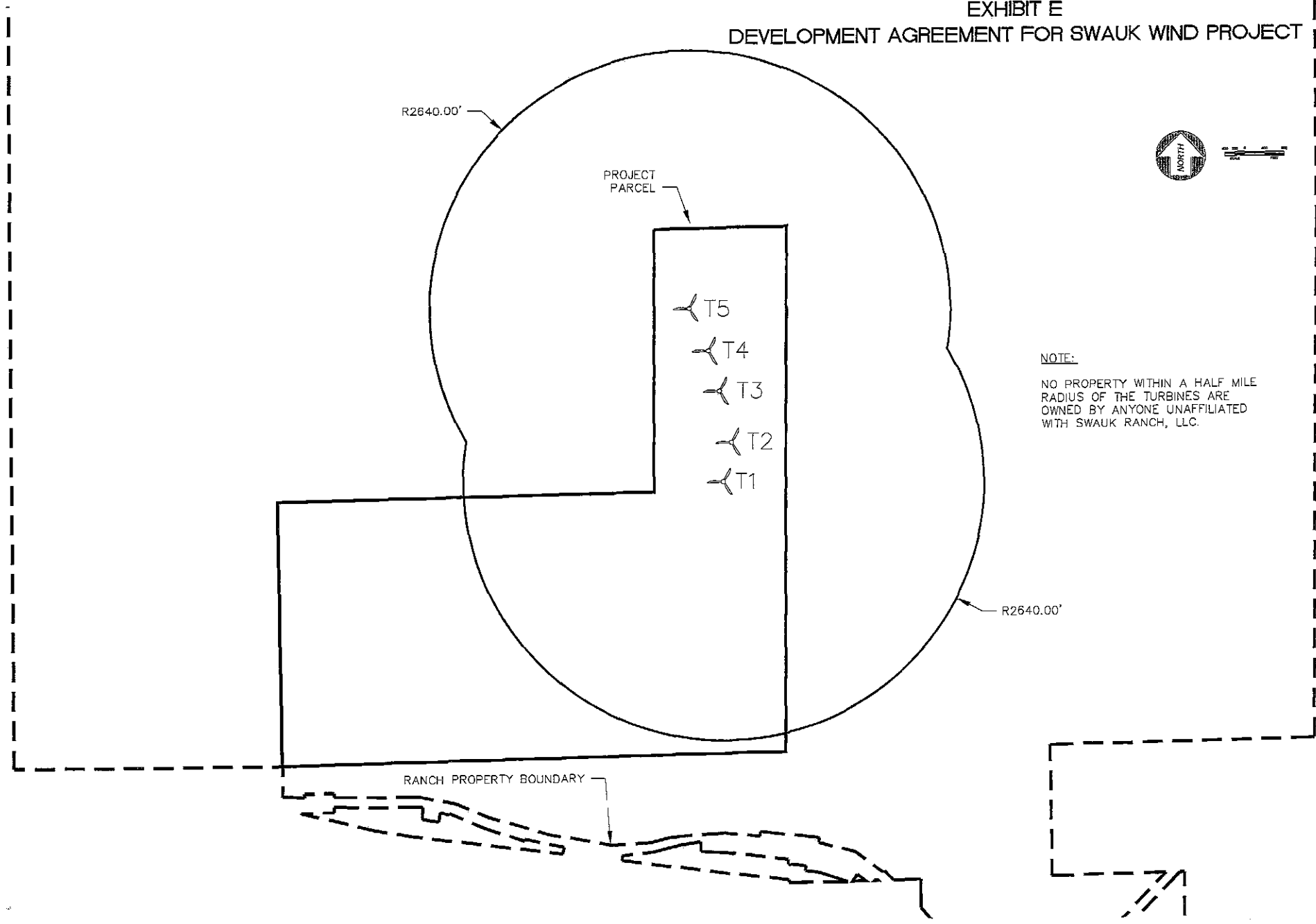
- T5
- T4
- T3
- T2
- T1

R2640.00'

RANCH PROPERTY BOUNDARY

NOTE:

NO PROPERTY WITHIN A HALF MILE  
RADIUS OF THE TURBINES ARE  
OWNED BY ANYONE UNAFFILIATED  
WITH SWAUK RANCH, LLC.





Federal Aviation Administration

« OE/AAA

Form 7460-1 for ASN: 2012-WTW-3702-OE

Overview		Received Date: 05/09/2012		
Study (ASN):	2012-WTW-3702-OE	Entered Date:	05/09/2012	
Prior Study:		Completion Date:	06/14/2012	
Status:	Determined	Expiration Date:	12/14/2013	
Letters:	Determination <input checked="" type="checkbox"/>	Map:	View Map	
Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.				
Sponsor Information		Sponsor's Representative Information		
Sponsor:	Swauk Wind LLC	Representative:	Swauk Wind LLC	
Attention Of:	Alex Cordas	Attention Of:	Alex Cordas	
Address:	P.O. Box 24567	Address:	P.O. Box 24567	
Address2:		Address2:		
City:	Seattle	City:	Seattle	
State:	WA	State:	WA	
Postal Code:	98124	Postal Code:	98124	
Country:	US	Country:	US	
Phone:	206-763-5403	Phone:	206-763-5403	
Fax:	206-768-7727	Fax:	206-768-7727	
Construction Info		Structure Summary		
Notice Of:	CONSTR	Structure Type:	Wind Turbine	
Duration:	PERM (Months: 0 Days: 0)	Structure Name:	Turbine #5 of 5	
Work Schedule:	07/01/2012 to 12/31/2012	FCC Number:		
Date Built:				
Structure Details		Height and Elevation		
Latitude (NAD 83):	47° 08' 38.57" N	Proposed	DNE	DET
Longitude (NAD 83):	120° 45' 19.70" W	Site Elevation:	2438	
Horizontal Datum:	NAD 83	Structure Height:	283	0 283
Survey Accuracy:	4D	Total Height (AMSL):	2721	0 2721
Marking/Lighting:	White Paint/Synchronized Red Lights			
Other Description:		Frequencies		
Current Marking/Lighting:	N/A New Structure	Low Freq	High Freq	Unit ERP Unit
Current Marking/Lighting Other Description:				
Name:				
City:	Cle Elum			
State:	WA			
Nearest Airport:	2W1			
Distance to Structure:	27096.09 feet			
On Airport:	No			
Direction to Structure:	116.87°			
Description of Location:	18511 hwy 10 Ellensburg, WA 98926			
Description of Proposal:	construction and installation of (5) five Gamesa G5x-850 wind turbines			



Federal Aviation Administration

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Form 7460-1 for ASN: 2012-WTW-3703-OE

Overview		Received Date: 05/09/2012		
Study (ASN):	2012-WTW-3703-OE	Entered Date:	05/09/2012	
Prior Study:		Completion Date:	06/14/2012	
Status:	Determined	Expiration Date:	12/14/2013	
Letters:	Determination	Map:	<a href="#">View Map</a>	
Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.				
Sponsor Information		Sponsor's Representative Information		
Sponsor:	Swauk Wind LLC	Representative:	Swauk Wind LLC	
Attention Of:	Alex Cordas	Attention Of:	Alex Cordas	
Address:	P.O. Box 24567	Address:	P.O. Box 24567	
Address2:		Address2:		
City:	Seattle	City:	Seattle	
State:	WA	State:	WA	
Postal Code:	98124	Postal Code:	98124	
Country:	US	Country:	US	
Phone:	206-763-5403	Phone:	206-763-5403	
Fax:	206-768-7727	Fax:	206-768-7727	
Construction Info		Structure Summary		
Notice Of:	CONSTR	Structure Type:	Wind Turbine	
Duration:	PERM (Months: 0 Days: 0)	Structure Name:	Turbine #4 of 5	
Work Schedule:	07/01/2012 to 12/31/2012	FCC Number:		
Date Built:				
Structure Details		Height and Elevation		
Latitude (NAD 83):	47° 08' 34.27" N	Proposed	DNE	DET
Longitude (NAD 83):	120° 45' 16.94" W	Site Elevation:	2417	
Horizontal Datum:	NAD 83	Structure Height:	283	0 283
Survey Accuracy:	4D	Total Height (AMSL):	2700	0 2700
Marking/Lighting:	White Paint Only			
Other Descriptions		Frequencies		
Name:		Low Freq	High Freq	Unit ERP Unit
City:	Cle Elum			
State:	WA			
Nearest Airport:	2W1			
Distance to Structure:	27464.85 feet			
On Airport:	No			
Direction to Structure:	117.5°			
Description of Location:	18511 hwy 10 Ellensburg, WA 98926			
Description of Proposal:	construction and installation of (5)five Gamesa G5x-850 wind turbines			



Federal Aviation Administration

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Form 7460-1 for ASN: 2012-WTW-3704-OE

Overview		Received Date: 05/09/2012		
Study (ASN):	2012-WTW-3704-OE	Entered Date:	05/09/2012	
Prior Study:		Completion Date:	06/14/2012	
Status:	Determined	Expiration Date:	12/14/2013	
Letters:	Determination	Map:	<a href="#">View Map</a>	
Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.				
Sponsor Information		Sponsor's Representative Information		
Sponsor:	Swauk Wind LLC	Representative:	Swauk Wind LLC	
Attention Of:	Alex Cordas	Attention Of:	Alex Cordas	
Address:	P.O. Box 24567	Address:	P.O. Box 24567	
Address2:		Address2:		
City:	Seattle	City:	Seattle	
State:	WA	State:	WA	
Postal Code:	98124	Postal Code:	98124	
Country:	US	Country:	US	
Phone:	206-763-5403	Phone:	206-763-5403	
Fax:	206-768-7727	Fax:	206-768-7727	
Construction Info		Structure Summary		
Notice Of:	CONSTR	Structure Type:	Wind Turbine	
Duration:	PERM (Months: 0 Days: 0)	Structure Name:	Turbine #3 of 5	
Work Schedule:	07/01/2012 to 12/31/2012	FCC Number:		
Date Built:				
Structure Details		Height and Elevation		
Latitude (NAD 83):	47° 08' 30.25" N	Proposed	DNE	DET
Longitude (NAD 83):	120° 45' 15.35" W	Site Elevation:	2399	
Horizontal Datum:	NAD 83	Structure Height:	283	0 283
Survey Accuracy:	4D	Total Height (AMSL):	2682	0 2682
Marking/Lighting:	White Paint Only			
Other Description:		Frequencies		
Name:		Low Freq	High Freq	Unit ERP Unit
City:	Cle Elum			
State:	WA			
Nearest Airport:	2W1			
Distance to Structure:	27752.16 feet			
On Airport:	No			
Direction to Structure:	118.14°			
Description of Location:	18511 hwy 10 Ellensburg, WA 98926			
Description of Proposal:	construction and installation of (5)five Gamesa G5x-850 wind turbines			



Federal Aviation Administration

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Form 7460-1 for ASN: 2012-WTW-3705-OE

Overview		Received Date: 05/09/2012		
Study (ASN):	2012-WTW-3705-OE	Entered Date:	05/09/2012	
Prior Study:		Completion Date:	06/14/2012	
Status:	Determined	Expiration Date:	12/14/2013	
Letters:	Determination	Map:	<a href="#">View Map</a>	
Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.				
Sponsor Information		Sponsor's Representative Information		
Sponsor:	Swauk Wind LLC	Representative:	Swauk Wind LLC	
Attention Of:	Alex Cordas	Attention Of:	Alex Cordas	
Address:	P.O. Box 24567	Address:	P.O. Box 24567	
Address2:		Address2:		
City:	Seattle	City:	Seattle	
State:	WA	State:	WA	
Postal Code:	98124	Postal Code:	98124	
Country:	US	Country:	US	
Phone:	206-763-5403	Phone:	206-763-5403	
Fax:	206-768-7727	Fax:	206-768-7727	
Construction Info		Structure Summary		
Notice Of:	CONSTR	Structure Type:	Wind Turbine	
Duration:	PERM (Months: 0 Days: 0)	Structure Name:	Turbine #2 of 5	
Work Schedule:	07/01/2012 to 12/31/2012	FCC Number:		
Date Built:				
Structure Details		Height and Elevation		
Latitude (NAD 83):	47° 08' 25.13" N	Proposed	DNE	DET
Longitude (NAD 83):	120° 45' 13.62" W	Site Elevation:	2422	
Horizontal Datum:	NAD 83	Structure Height:	283	0 283
Survey Accuracy:	4D	Total Height (AMSL):	2705	0 2705
Marking/Lighting:	White Paint Only			
Other Description:		Frequencies		
Name:		Low Freq	High Freq	Unit ERP Unit
City:	Cle Elum			
State:	WA			
Nearest Airport:	2W1			
Distance to Structure:	28105.15 feet			
On Airport:	No			
Direction to Structure:	118.96°			
Description of Location:	18511 hwy 10 Ellensburg, WA 98926			
Description of Proposal:	construction and installation of (5)five Gamesa G5x-850 wind turbines			



Federal Aviation Administration

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Form 7460-1 for ASN: 2012-WTW-3706-OE

Overview		Received Date: 05/09/2012		
Study (ASN):	2012-WTW-3706-OE	Entered Date:	05/09/2012	
Prior Study:		Completion Date:	06/14/2012	
Status:	Determined	Expiration Date:	12/14/2013	
Letters:	Determination	Map:	View Map	
Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.				
Sponsor Information		Sponsor's Representative Information		
Sponsor:	Swauk Wind LLC	Representative:	Swauk Wind LLC	
Attention Of:	Alex Cordas	Attention Of:	Alex Cordas	
Address:	P.O. Box 24567	Address:	P.O. Box 24567	
Address2:		Address2:		
City:	Seattle	City:	Seattle	
State:	WA	State:	WA	
Postal Code:	98124	Postal Code:	98124	
Country:	US	Country:	US	
Phone:	206-763-5403	Phone:	206-763-5403	
Fax:	206-768-7727	Fax:	206-768-7727	
Construction Info		Structure Summary		
Notice Of:	CONSTR	Structure Type:	Wind Turbine	
Duration:	PERM (Months: 0 Days: 0)	Structure Name:	Turbine #1 of 5	
Work Schedule:	07/01/2012 to 12/31/2012	FCC Number:		
Date Built:				
Structure Details		Height and Elevation		
Latitude (NAD 83):	47° 08' 21.11" N	Proposed	DNE	DET
Longitude (NAD 83):	120° 45' 14.89" W	Site Elevation:	2391	
Horizontal Datum:	NAD 83	Structure Height:	283	0 283
Survey Accuracy:	4D	Total Height (AMSL):	2674	0 2674
Marking/Lighting:	White Paint/Synchronized Red Lights			
Other Description:		Frequencies		
Name:		Low Freq	High Freq	Unit ERP Unit
City:	Cle Elum			
State:	WA			
Nearest Airport:	2W1			
Distance to Structure:	28228.96 feet			
On Airport:	No			
Direction to Structure:	119.77°			
Description of Location:	18511 hwy 10 Ellensburg, WA 98926			
Description of Proposal:	construction and installation of (5)five Gamesa G5x-850 wind turbines			