

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2009-01

of

WHISTLING RIDGE ENERGY, L.L.C.

for

WHISTLING RIDGE ENERGY  
PROJECT

FRIENDS OF THE COLUMBIA GORGE'S  
OPENING ADJUDICATIVE BRIEF

ORAL ARGUMENT REQUESTED

**TABLE OF CONTENTS**

**I. Introduction**.....1

**II. Request for Oral Argument** .....3

**III. The Council's statutory and regulatory mandates.** .....4

    A. The Council must balance the Project's environmental impacts against its economic benefits .....4

**IV. Argument**.....6

    A. The Application fails to describe the number, locations, and dimensions of the proposed wind turbines, and fails to propose alternatives for these characteristics .....6

    B. The Project would substantially harm scenic resources that are an enormously important part of our national heritage .....12

        1. The Council's statutes and regulations require protection of scenic resources from adverse impacts .....13

        2. The Application does not describe the version of the Project that is currently proposed, thereby depriving the parties, the public, and expert agencies any opportunity to review and comment on its scenic impacts .....14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. The Application utterly fails to account for the national significance of the Columbia River Gorge throughout the scenic impacts analysis.....15

4. The record contains an unprecedented amount of expert commentary uniformly concluding that the Project will cause unacceptable adverse impacts to scenic landscapes that are critical aspects of our national heritage .....19

a. Landscape architect Dean Apostol, a leading expert in his field, has thoroughly analyzed the Application and concluded its analysis is flawed and that the Project would cause significant adverse impacts to scenic resources .....19

b. The U.S. Forest Service found systemic flaws in the Applicant’s scenic impacts analysis and recommended removing all turbines visible from designated Key Viewing Areas to protect the scenic resources of “one of America’s natural wonders.” .....21

c. The National Park Service has concluded that the Project would cause unacceptable adverse impacts to scenic resources, and recommended removal of turbines to reduce the Project’s adverse impacts to views from National Scenic Trails within the Columbia River Gorge .....22

d. Jurgen Hess, former lead landscape architect for the National Scenic Area, has concluded that the Project would cause very high adverse impacts to scenic resources and that denial is warranted under the National Academy of the Sciences’ standards .....24

5. The scenic impacts analysis in the Application is riddled with methodological errors and omissions .....26

a. The Applicant invented a new methodology specifically for the Whistling Ridge Project that has not been peer reviewed nor approved by any agency with experience in scenic resource management .....26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- b. The Application fails to consider available planning and inventory materials to evaluate the scenic impacts to the affected environment, and instead applies the Federal Highway Administration Manual, which is not well-suited for review of wind energy projects .....31
- c. The Application fails to provide simulations of multiple important views .....33
- d. The visual simulations in the Application underrepresent the Project’s impacts. ....36
- e. The Application’s conclusions on scenic impacts are inconsistent with the conclusions of the leading scenic resource experts and expert agencies on scenic resources, and do not follow from the analysis in the Application .....37
- f. The Application fails to adequately address the impacts of the Project’s lighting and completely ignores the impacts of moving turbine blades.....38

6. Because the Project would cause significant adverse impacts to scenic resources, it should be denied. ....40

C. The Project would substantially harm recreational resources. ....40

D. The Applicant has not demonstrated that the proposed facility will have minimal adverse effects on wildlife and habitat. ....41

- 1. The Applicant has failed to demonstrate that avian impacts will be low .....42
  - a. The Applicant failed to perform the required full year of surveys, and missed peak migrations .....43
  - b. The Applicant did not account for inter-annual variation .....46
  - c. The Applicant’s predictions are unreliable because they fail to account for several significant factors.....46
  - d. The Applicant has not provided enough information to make an “informed decision” in this matter .....48

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

e. The Applicant has not demonstrated that impacts to the endangered northern spotted owl have been adequately considered and addressed .....52

2. The Applicant must provide a detailed discussion of whether its proposed wildlife mitigation parcel would meet the Council’s standards, and the public and the parties must be given an opportunity to review and testify on the adequacy of the proposal.....54

3. The Applicant has not demonstrated that its proposed mitigation parcel would achieve “no net loss” of habitat function and value .....56

E. Cultural resources must be protected.....60

**VII. Conclusion .....60**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF AUTHORITIES

### United States Code

16 U.S.C. §§ 1531–1544.....	52
16 U.S.C. § 470f .....	60

### Code of Federal Regulations

40 C.F.R. § 1502.25(a).....	60
-----------------------------	----

### Revised Code of Washington

RCW 19.285.020 .....	2
RCW 76.09.020(8).....	58
RCW 80.50.010 .....	4
RCW 80.50.010(2).....	4, 14
RCW 80.50.010(3).....	4

### Washington Administrative Code

WAC 222-16-086(10).....	52
WAC 463-14-020.....	5
WAC 463-14-020(1).....	41
WAC 463-47-110(1)(a) .....	5, 14
WAC 463-47-110(1)(a)(iv).....	60
WAC 463-47-110(1)(b) .....	5, 14
WAC 463-47-110(1)(d) .....	5, 14
WAC 463-60-010.....	6
WAC 463-60-085.....	11
WAC 463-60-116(1).....	9, 56
WAC 463-60-116(2).....	10, 56
WAC 463-60-116(3).....	10
WAC 463-60-145.....	6, 9
WAC 463-60-296.....	11, 54
WAC 463-60-362.....	?
WAC 463-60-332.....	5
WAC 463-60-332(2).....	42, 47
WAC 463-60-332(2)(e) .....	42, 48, 51
WAC 463-60-332(2)(c) .....	42, 51

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WAC 463-60-332(2)(g) ..... 43  
WAC 463-60-332(3) ..... 55  
WAC 463-60-332(4) ..... 42  
WAC 463-60-342(5) ..... 5  
WAC 463-60-362 ..... 7  
WAC 463-60-362(3) ..... 5, 14  
WAC 463-60-362(4) ..... 14  
WAC 463-60-362(5) ..... 14  
WAC 463-60-535(4)(e) ..... 5  
WAC 463-62-040 ..... 41, 57  
WAC 463-62-040(d) ..... 57  
WAC 463-62-040(2)(d) ..... 42  
WAC 463-62-040(2)(f) ..... 42, 44, 45  
WAC 463-64-020 ..... 5, 14  
WAC 463-66-050 ..... 11

**Council Orders**

Council Order No. 843 (Nov. 16, 2009) ..... 4, 6, 49  
Council Order No. 850 (Aug. 11, 2010) ..... 60

**Other Authorities**

Concise Explanatory Statement of WAC 463, Energy Facility Site Evaluation  
Council Operational Rules and Energy Facility Construction and Operation  
Standards (Oct. 11, 2004). ..... *passim*  
Concise Explanatory Statement of WAC 463, Energy Facility Site Evaluation  
Council Operational Rules at 3 (Oct. 2007) ..... 44

1 **I. Introduction**

2 The proposed Whistling Ridge Energy Project (“WREP” or “the Project”) is easily the  
3 most controversial and problematic wind energy project this Council has ever reviewed.  
4 Indeed, the proposed site, in the heart of the Columbia River Gorge and surrounded by  
5 sensitive and unique scenic, natural, cultural, recreational, and socioeconomic resources, is one  
6 of the *worst* sites in all of Washington State to locate a wind energy project. The WREP would  
7 permanently harm nationally significant resources as well as local community interests, even  
8 while providing little to no benefit to the state or region. Simply put, this is the wrong site for  
9 an industrial-scale wind energy facility.  
10

11 The Council’s comprehensive mandate requires it to analyze and balance three main  
12 factors: the proposed Project’s environmental impacts, the broad interests of the public, and  
13 whether the Project would supply abundant electricity at a reasonable cost. Although the  
14 Applicant has failed to provide sufficient information about its revised proposal and the  
15 possible alternatives thereto, and the public has not yet been afforded an opportunity to review  
16 and comment on these details, it certainly appears at this point that the Project fails on all sides  
17 of the equation. The Project would result in tremendous harm to the environment. The Project  
18 would produce only a small amount of energy that is not likely to serve the Pacific Northwest.  
19 And the Project is not in the public interest—neither in the interest of the locally affected  
20 communities, the State of Washington, nor of the nation at large. The scales easily tip in favor  
21 of recommending denial of the Project.  
22

23 On the one hand, the Project would result in tremendous adverse impacts to the  
24 environment. Numerous experts, including expert federal agencies, have concluded that the  
25  
26  
27  
28

1 Project would harm one of the most important scenic landscapes in the country. The Project  
2 would permanently convert forested habitat to an industrial use in an area designated for the  
3 protection of the northern spotted owl. The Applicant has completely failed to demonstrate that  
4 the avian mortality of the Project would be low and has failed to propose adequate mitigation  
5 for natural resource impacts (an issue that the public has been deprived of an opportunity to  
6 review and comment on because of the Applicant’s last-minute mitigation proposal). The  
7 Project would substantially disrupt a rural residential community and its burgeoning  
8 agritourism economy by blighting the landscape, introducing major traffic impacts, and  
9 creating noise that the Applicant has failed to adequately study and disclose.  
10  
11

12 On the other hand, the Project would not bring meaningful benefits to the citizens of  
13 Washington.<sup>1</sup> The Project would be located in an area with only marginal to good wind speeds  
14 and would optimistically add only 20 MW of intermittent energy to a wind fleet in the Pacific  
15 Northwest that will soon be more than 9,000 MW of capacity and growing in an already  
16 crowded grid. The State of Washington is already meeting its need for wind energy and, if  
17 more is needed, Washington and the greater Pacific Northwest region have abundant wind  
18 energy resources that can meet demand without sacrificing important aspects of our national  
19 heritage. Finally, the Project would fail to implement the intent of Washington voters in  
20 adopting renewable portfolio standards. The citizens of Washington support “appropriately  
21 sited” renewable energy facilities, not projects like Whistling Ridge that would harm our iconic  
22 landscapes. RCW 19.285.020.  
23  
24  
25

---

26  
27 <sup>1</sup> As requested by the Council in Pre-Hearing Order No. 1, Friends and Save Our Scenic Area  
28 have worked to avoid duplication by not repeating similar detailed arguments in two different briefs.  
Accordingly, Friends incorporates the points made in the SOSA brief.

1 The claims regarding dire economic conditions in Skamania County and economic  
2 benefits that would accrue from this Project are completely exaggerated. Skamania County is  
3 actually in reasonable condition for a county of its population, and this proposed Project would  
4 bring only minimal economic benefits.  
5

6 The proposed Project's tremendous harms outweigh its minimal benefits. In order to  
7 ensure the protection of our national heritage, scenic landscapes, wildlife, and communities,  
8 there is only one appropriate choice: the Council should recommend denial of the Application.  
9

## 10 **II. Request for Oral Argument**

11 In view of the extraordinary nature and national importance of this matter, Intervenors  
12 request that the matter be set for oral argument at the Council's convenience. As the Council  
13 strives to protect the public interest and reach its ultimate conclusions in this adjudication,  
14 much is at stake, and important precedent is likely to be established. The parties have provided  
15 only very short oral opening statements of ten minutes each. Given the wide array of complex  
16 issues, the length of the administrative record, and the multiple parties with divergent positions  
17 in this matter, we believe two to three hours for oral argument will be time well spent. Oral  
18 argument will allow an opportunity for the parties to distill the arguments, and for the Council  
19 to ask questions of the parties about issues in dispute. To promote efficiency, oral argument  
20 could possibly be held in the Columbia River Gorge the day before or after the views of the site  
21 and key viewing areas.  
22  
23

24 ///

25 ///

26 ///

1 **III. The Council’s statutory and regulatory mandates**

2 **A. The Council must balance the Project’s environmental impacts against its**  
3 **economic benefits.**

4 The Council’s overarching task is to determine whether the proposed facility, at this  
5 location, “will produce a *net benefit* after balancing the legislative directive to provide abundant  
6 energy at a reasonable cost with the impact to the environment and the broad interests of the  
7 public.” Council Order No. 843 at 23 (Nov. 16, 2009). This task stems from RCW 80.50.010,  
8 which states that the Council must “balance the increasing demands for energy facility location  
9 and operation in conjunction with the broad interests of the public.” The Council refers to this  
10 task as its “comprehensive mandate.” Council Order No. 843 at 8.

11  
12 The comprehensive mandate requires the Council to address a number of factors: “[t]o  
13 preserve and protect the quality of the environment; to enhance the public’s opportunity to  
14 enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air  
15 cleanliness; and to pursue beneficial changes in the environment.” RCW 80.50.010(2). The  
16 Council must also ensure that the Project will “provide abundant energy at reasonable cost.”  
17 RCW 80.50.010(3).  
18

19  
20 The Council’s regulations expressly incorporate this comprehensive mandate:

21 In acting upon any application for certification, *the council action will be based*  
22 *on the policies and premises set forth in RCW 80.50.010*, including, but not  
23 limited to:

- 24 (1) Ensuring through available and reasonable methods that the  
25 location and operation of such facilities will produce minimal  
26 adverse effects on the environment, ecology of the land and its  
27 wildlife, and the ecology of state waters and their aquatic life.  
28 (2) Enhancing the public’s opportunity to enjoy the esthetic and  
recreational benefits of the air, water and land resources; and  
(3) Providing abundant power at reasonable cost.

1 WAC 463-14-020 (emphasis added); *see also* WAC 463-60-332, -342(5), -362(3), -535(4)(e)  
2 (requiring consideration of impacts on aesthetics, habitat, wildlife, and socioeconomic factors).

3 The Council has an “overriding policy . . . to avoid or mitigate adverse environmental  
4 impacts which may result from the council’s decisions.” WAC 463-47-110(1)(a). In complying  
5 with this policy, the Council must, among other considerations, preserve resources of national  
6 and historic significance:  
7

8 The council shall *use all practicable means*, consistent with other essential  
9 considerations of state policy, to improve and coordinate plans, functions,  
10 programs, and resources to the end that the state and its citizens may:

- 11 (i) Fulfill the responsibilities of each generation as trustee of the  
environment for succeeding generations;
- 12 (ii) Assure for all people of Washington safe, healthful, productive, and  
aesthetically and culturally pleasing surroundings;
- 13 (iii) Attain the widest range of beneficial uses of the environment without  
degradation, risk to health or safety, or other undesirable and  
14 unintended consequences;
- 15 (iv) *Preserve important historic, cultural, and natural aspects of our  
national heritage*;
- 16 (v) Maintain, wherever possible, an environment which supports diversity  
and variety of individual choice;
- 17 (vi) Achieve a balance between population and resource use which will  
18 permit high standards of living and a wide sharing of life’s amenities;  
and
- 19 (vii) Enhance the quality of renewable resources and approach the  
20 maximum attainable recycling of depletable resources.

21 WAC 463-47-110(1)(b) (emphasis added).

22 The Council must also “ensure that presently unquantified environmental amenities and  
23 values will be given appropriate consideration in decision making along with economic and  
24 technical considerations.” WAC 463-47-110(1)(d). And the Council must “protect state or local  
25 governmental or community interests affected by the construction or operation of the energy  
26 facility.” WAC 463-64-020.  
27  
28

1 Under these and other authorities, the Council must ensure the protection of the Columbia  
2 River Gorge and the surrounding areas, the local communities, and these areas' special scenic,  
3 natural, cultural, historic, and recreational qualities.  
4

5 The Applicant bears the burden of demonstrating compliance with all applicable criteria.  
6 Council Order No. 843 at 13 (Nov. 16, 2009) (“The applicant has the burden of demonstrating  
7 through its evidence that the Project meets the requirements of law, consistent with the  
8 legislative policy and intent of RCW 80.50 and the Council has the obligation to review the  
9 evidence, even when uncontested, to ensure that it meets the requirements of law and rule.”).  
10

#### 11 **IV. Argument**

##### 12 **A. The Application fails to describe the number, locations, and dimensions of the** 13 **proposed wind turbines and fails to propose alternatives for these characteristics.**

14 The Application fails to describe the characteristics of the Project, particularly the  
15 number, locations, and dimensions of the proposed wind turbines. Instead, the Application  
16 proposes these characteristics only in broad, hypothetical terms, failing to sufficiently explain  
17 what is proposed. The Application does not comply with the Council's rules for project details,  
18 alternatives analyses, and amendments to a proposed project. If the Application is not amended  
19 to address these problems, it must be denied.  
20

21 The Council's rules require the Application to describe the characteristics of an energy  
22 project with particularity so that its details and impacts, as well as alternatives to the proposed  
23 characteristics, can be fully evaluated and adjudicated. For example, WAC 463-60-145 requires  
24 the Application to “describe the characteristics of the construction to occur at the proposed site  
25 including the type, size, and cost of the facility” and to describe “major components” and  
26 “significant features” of the proposed project. Similarly, WAC 463-60-010 requires the  
27  
28

1 Application to provide “sufficient detailed information,” including “the proposed project design  
2 and features.” To provide another example, WAC 463-60-362 requires the Application to  
3 “show the location and design of the facilities relative to the physical features of the site.”  
4

5 For a wind energy facility, no details are more basic and essential than the number,  
6 locations, and sizes of the proposed wind turbines. This information would allow the Council,  
7 the parties, and the public to fully understand what is being proposed and what impacts might  
8 result. Without such information, there cannot be a full understanding of what is proposed, nor  
9 the extent of the impacts.  
10

11 For example, moving the location of a specific wind turbine even a few hundred feet  
12 closer to or away from a sensitive natural resource site, to a less or more visible location, or  
13 closer to or away from a residential area—might make major differences in the impacts of that  
14 turbine. That is in part why WAC 463-60-362 requires the Application to “show the location  
15 and design of the facilities relative to the physical features of the site.”  
16

17 Incredibly, the Applicant has been unwilling to describe or depict the specific locations of  
18 proposed turbines—let alone the exact *number* of turbines proposed. Instead, the Applicant  
19 argues it is seeking a permit for wind energy “corridors,” each corridor 650 feet in width and up  
20 to several thousand feet in length. *See, e.g.*, Amended Application at fig. 2.3-1 & pp. 2.1-1, 2.1-  
21 3. Further, the Applicant argues that any specific turbine locations or numbers depicted within  
22 these corridors on the Applicant’s maps are purely “hypothetical” and that the Applicant would  
23 decide on actual turbine numbers and locations only after obtaining a permit. Jan. 3, 2011 Tr. at  
24  
25  
26  
27  
28

1 57:15, 72:20; Amended Application at 2.1-1<sup>2</sup>; *see also* Jan. 4, 2011 Tr. at 181 (“We have never  
2 ever represented that [the] locations [depicted by the Applicant on Exhibit 1.11] will be built”).  
3 Moreover, the Applicant even alleged during the hearing that the *corridors themselves* are  
4 “potential” corridors. Jan. 7, 2011 Tr. at 933:3–5. The Applicant also plays number games,  
5 alleging that because the Application proposes “up to 50 turbines,” the Applicant can at a later  
6 date choose whatever number it likes between 1 and 50, and decide where such turbines would  
7 be built. *See* Jan. 4, 2011 Tr. at 176.  
8  
9

10 The lack of clarity and specificity in the Application has only been compounded by the  
11 Applicant’s oral statements. During cross-examination at the hearing, nearly two years after the  
12 Application was filed, the Applicant announced for the first time that it would be “willing” to  
13 consider a new “option” of reducing the “maximum” number of proposed turbines from 50 to  
14 38, while using larger turbines. Jan. 3, 2011 Tr. at 74:5, 127:3–9. Yet the actual proposed  
15 number, locations, and dimensions for the turbines remain unspecified and unknown. Not only  
16 is the Application silent on this new proposal, there is not even a single site map in the record  
17 depicting what the Applicant has in mind:  
18

19 Q. So do you have, Mr. Spadaro, a drawing that would show how many  
20 turbines would be in each of your strings A, B, C, D, and E?

21 A. We do not.  
22

23 Jan. 3, 2011 Tr. at 76:2–5. Further, the Applicant will not even state with certainty  
24 which turbines it might desire to delete from its proposal:

25 Q. Where might the other five [turbines] be taken away if you’re going to  
26 end up with 38 if they’re [each] two megawatts?

---

27 <sup>2</sup> The Applicant refers to a “micrositing process” without citing any statutory or regulatory  
28 authority for such a process. *See, e.g.*, Amended Application at 2.1-1.

1  
2 A. I can't answer that. I think I was asked that earlier. I still . . . cannot  
3 answer that.

4 *Id.* at 127–28.

5 By waiting until cross-examination (after the hearing began) to disclose its nebulous  
6 change in plans, the Applicant has denied the other parties the opportunity to specifically  
7 review and comment on the noise, geological, aesthetic, and other implications of these  
8 changes. Even the Applicant's expert witnesses, including its lead consultant, were not aware  
9 of the changes prior to the hearing, but rather based their testimony on the initial proposal of 50  
10 turbines, each with a 1.5-MW capacity. *See, e.g.*, Jan. 3, 2011 Tr. at 95:7–15, 125–26; Jan. 4,  
11 2011 Tr. at 202; Jan. 5, 2011 Tr. at 494, 503:6–13; Jan. 6, 2011 Tr. at 1–6. The Applicant  
12 further admits it has not modeled the scenic impacts of what it desires to build, but rather  
13 modeled an “overstated” scenario of “something that . . . is never going to be built.” Jan. 4,  
14 2011 Tr. at 57:16; Jan. 4, 2011 Tr. at 182:12–13. And the Applicant admits it does not know  
15 how its oral changes announced at the hearing might affect the estimated project cost (Jan. 4,  
16 2011 Tr. at 190–91), even though that information is required to be disclosed in the Application  
17 (WAC 463-60-145).  
18  
19  
20

21 The Applicant's “hide the ball” tactics are a direct violation of the Council's rules. The  
22 Applicant is specifically required to ensure that the Application represents the “best available  
23 current information and intentions of the applicant.” WAC 463-60-116(1). The Applicant  
24 cannot amend its proposal solely through oral “remarks” to the Council through cross-  
25 examination at the hearing (Jan. 3, 2011 Tr. at 74:25), but rather must adhere to the procedures  
26  
27  
28

1 and time periods spelled out in the Council's rules. Those procedures and time periods are as  
2 follows.

3 First, "[a]mendments to a pending application must be presented to the council at least  
4 thirty days prior to the commencement of the adjudicative hearing." WAC 463-60-116(2). This  
5 rule is to allow the Council, the parties, and the public a sufficient opportunity to evaluate and  
6 respond to the amendments prior to the hearing. Here, the Applicant prevented any such  
7 opportunity.  
8

9  
10 Second, "[w]ithin thirty days after the conclusion of the hearings, the applicant shall  
11 submit to the council . . . application amendments which include all *commitments* and  
12 *stipulations* made by the applicant during the adjudicative hearings." WAC 463-60-116(3)  
13 (emphasis added). During the hearing, the Applicant made several oral statements that it would  
14 "stipulate" and "commit" to certain limitations on and changes, none of which have been  
15 spelled out in the Application. Jan. 3, 2011 Tr. at 73:20, 75:21, 126:15–17, 126:25, 127:5,  
16 128:4, 128:6; Jan. 4, 2011 Tr. at 189:10; *see also* Jan. 3, 2011 Tr. at 127:17–19 ("We are  
17 willing to state . . ."). These include changes to the maximum number, possible locations,  
18 minimum size, and minimum energy capacity of the individual proposed turbines. The  
19 Applicant *never* submitted Application amendments reflecting its stipulations and  
20 commitments, let alone within the thirty days required by the rule. The Applicant's failure to  
21 comply with the Council's rules prejudices the parties and the public. The Applicant's  
22 "commitments" and "stipulations" have been described only orally and in a nebulous manner  
23 once the hearing was underway, with no opportunity whatsoever for public scrutiny.  
24  
25  
26  
27  
28

1 A related problem is that the Alternatives section of the Application fails to provide *any*  
2 discussion of alternative configurations in terms of number, layout, and design of wind turbines  
3 at the site. Such a discussion is not only required by the Council’s rules, it could easily be done,  
4 because the Applicant itself now freely admits to some flexibility on the number, siting, and  
5 specifications for the turbines.  
6

7 The Council’s rules require a thorough explanation and analysis of alternatives. For  
8 example, the Application must “summarize the . . . means to be utilized to minimize or mitigate  
9 possible adverse impacts . . . of the proposal, all associated facilities, and any alternatives being  
10 brought forward.” WAC 463-60-085. Similarly, the Application must “include an analysis of  
11 alternatives for site, route, and other major elements of the proposal.” WAC 463-60-296. And  
12 “[r]easonable alternative means by which the purpose of the proposal might be achieved shall  
13 be considered.” WAC 463-66-050.  
14  
15

16 The Application fails to comply with these rules. Instead, the Application presents a “take  
17 it or leave it” approach, setting forth only one proposal and the no action alternative. *See*  
18 Amended Application at § 2.19. The Application fails to evaluate different turbine numbers,  
19 configurations, and sizes, and fails to demonstrate how the various possibilities might increase  
20 or decrease the Project’s impacts.  
21

22 Rather than supply the required alternatives analysis, the Applicant actually suggests that  
23 the Council members and the public should just guess and “imagine” such an analysis in their  
24 own heads. Jan. 4, 2011 Tr. at 182:13–15 (“[J]ust simply look at the visual simulations if you  
25 want and imagine a lot less turbines . . .”). The Applicant’s approach is a patent violation of  
26 the Council’s rules. One’s imagination does not constitute evidence. Furthermore, an oral  
27  
28

1 description of uncertain and amorphous changes to project details, unaccompanied by a single  
2 iota of evidence about the extent to which such changes might reduce impacts, is not an  
3 adequate alternatives analysis. The Council members have no way of knowing how many  
4 turbines might be visible from each viewpoint under the Applicant's new, yet to be fully  
5 described proposal—let alone what the impacts of these imaginary turbines might be. The  
6 Council should reject the Applicant's position that the Council and the parties should have to  
7 guess and imagine what the simulations of a future reconfiguration of the Project might look  
8 like. The Applicant has not met its burden of supplying an adequate alternatives analysis.  
9  
10

11 In conclusion, the Applicant's refusal to provide even the most basic of details for its  
12 proposed Project, such as a site map depicting the number and specific locations of proposed  
13 wind turbines and alternatives thereto, should not be accepted. The Applicant should not be  
14 permitted to "hide the ball," especially not with nebulous changes described orally for the first  
15 time during cross-examination. Indeed, the Council's rules require the Applicant to keep its  
16 current intentions expressly stated in the Application as those intentions evolve over time.  
17

18 Absent the required amendments to the Application, it is impossible for the parties and the  
19 Council to understand and critique exactly what is being proposed and what the impacts and  
20 alternatives might be. If the Application is not amended to address these problems, it must be  
21 denied for failing to comply with the Council's rules.  
22

23 **B. The Project would substantially harm scenic resources that are an enormously**  
24 **important part of our national heritage.**

25 The record shows that the Project would substantially harm scenic resources that are  
26 enormously important aspects of our national heritage. It is unlikely that the Council has ever  
27 received the quality and breadth of comments addressing the scenic impacts of an energy  
28

1 facility as it has here. These include comments from the U.S. Forest Service and the National  
2 Park Service (federal agencies with expertise in the affected scenic landscape), leading experts  
3 in landscape aesthetics, and nonprofit organizations with extensive knowledge about the  
4 affected landscape. These comments uniformly conclude that the project will cause adverse  
5 impacts to views from the Columbia River Gorge, including views from the Lewis and Clark  
6 National Historic Trail, the Historic Columbia River Highway, numerous hiking trails, multiple  
7 communities, and designated key viewing areas (“KVAs”) in the Columbia River Gorge  
8 National Scenic Area.  
9  
10

11 On the other hand, the Applicant’s scenic impacts analysis is severely flawed, as  
12 evidenced by the multiple critiques from expert agencies and leading landscape architects. The  
13 Applicant invents a new process for evaluating scenic impacts that was neither peer-reviewed  
14 nor approved by agencies with expertise in scenic resource management. The Applicant’s  
15 numerous methodological errors and omissions result in an incoherent and indefensible  
16 analysis of scenic impacts.  
17

18 The comments and testimony from professional landscape architects, the Forest Service,  
19 the National Park Service, and countless other stakeholders concluding that the Project would  
20 have unacceptable adverse impacts to scenic resources are overwhelming and incontrovertible.  
21 The Project must be denied, lest it irreparably harm “one of America’s natural wonders.” Ex.  
22 21.02 at 1.  
23

24 **1. The Council’s statutes and regulations require protection of scenic**  
25 **resources from adverse impacts.**

26 The Council’s statutes and regulations require protections of scenic resources,  
27 particularly when they are important aspects of our national heritage.  
28

1 The Council must “preserve and protect the quality of the environment,” “enhance the  
2 public’s opportunity to enjoy the *esthetic* and recreational benefits of . . . air, water and land  
3 resources,” and “pursue beneficial changes in the environment.” RCW 80.50.010(2) (emphasis  
4 added). The Council must also “ensure that presently unquantified environmental amenities and  
5 values will be given appropriate consideration in decision making along with economic and  
6 technical considerations.” WAC 463-47-110(1)(d). And the Council must “protect state or local  
7 governmental or community interests affected by the construction or operation of the energy  
8 facility.” WAC 463-64-020.

9  
10  
11 Ultimately, the Council has an “overriding policy . . . to avoid or mitigate adverse  
12 environmental impacts which may result from the council’s decisions.” WAC 463-47-  
13 110(1)(a). With regard to scenic resources in particular, “[t]he council shall use all practicable  
14 means . . . [to] [a]ssure for all people of Washington safe . . . aesthetically and culturally  
15 pleasing surroundings . . . [and to] [p]reserve important historic, cultural, and natural aspects of  
16 our national heritage . . . .” WAC 463-47-110(1)(b).<sup>3</sup>

17  
18 **2. The Application does not describe the version of the Project that is**  
19 **currently proposed, thereby depriving the parties, the public, and expert**  
20 **agencies any opportunity to review and comment on its scenic impacts.**

21 Because the Applicant orally altered the proposed Project after the hearing began and  
22 without fully describing the intended changes, it is impossible for the parties and the Council to  
23 understand and critique the likely scenic impacts. All of the analysis and testimony on scenic  
24 impacts that the Council has received to date was directed at a proposal that no longer exists.  
25 As conveyed by the Applicant’s counsel, the visual assessment analyzes a project that “is never  
26

---

27 <sup>3</sup> See also WAC 463-60-362(3), (4), (5) (The Application must document impacts to aesthetic,  
28 recreational, cultural, and historic elements of the affected environment).

1 going to be built.” Jan. 4, 2011 Tr. 182: 12–13. The record has been based exclusively on a  
2 hypothetical proposal. As discussed above, the Applicant must amend the Application to  
3 describe the currently proposed project details and alternatives.  
4

5 **3. The Application utterly fails to account for the national significance of the**  
6 **Columbia River Gorge throughout the scenic impacts analysis.**

7 All of the various scenic impacts methodologies explain that special designations need to  
8 be factored in throughout the scenic impacts assessment. The FHWA’s manual specifically  
9 states that “a first approach to establishing the visual quality of a project area is simply to check  
10 for designated scenic areas ” and that the “cultural significance of the visual resource” needs to  
11 be factored into the viewer sensitivity analysis. Exs. 9.03R at 46, 8.13c at 68, 70. The Forest  
12 Service’s manual explains that special places are important and lists the Columbia River Gorge  
13 as an example of just such a place. Ex. 8.14c at 34; *see also* Ex. 8.11c at 3 (BLM manual), and  
14 Public Comment #351 (National Academy of Sciences, *Environmental Impacts of Windy*  
15 *Energy Projects*, Appendix D at 355, 364 (National Academies Press, 2007)(“NAS Report”).  
16  
17

18 It is indisputable that the landscape surrounding the Project is nationally significant. The  
19 Forest Service describes the Columbia River Gorge landscape as “one of America’s natural  
20 wonders.” Ex. 21.01 at 1. The National Park Service describes the landscape as critical to the  
21 experience of visitors to the Lewis and Clark National Historic Trail. Ex. 21.04 at 1. Across the  
22 Columbia River from the Project, portions of the Historic Columbia River Highway (“HCRH”)  
23 make up the HCRH Historic District and are included in extensive restoration and enhancement  
24 plans. Exs. 8.17c, 8.18c, 8.19c, 21.07; Public Comment #180. And multiple Oregon State Parks  
25 to the south provide hiking opportunities and access to views of the surrounding mountains. Ex.  
26 8.20c; Jan. 4, 2011 Tr. at 274:1-6. Views in this area have been thoroughly inventoried by the  
27  
28

1 Forest Service, and their national significance is thoroughly documented in the record. *See,*  
2 *e.g.*, Exs. 8.15c at I-1–I-2, 8.19c, 21.02, 21.04, 21.05, 21.06. Even if only a few large-scale  
3 wind turbines were added to this landscape, it would be a major change to the landscape and a  
4 major scenic impact.  
5

6 The Columbia River Gorge is truly a one-of-kind location, full of picture-postcard views  
7 of spectacular landscapes that also tell the story of our country. The scenic, cultural, and  
8 historic significance of the landscape cannot be overstated. *See, e.g.*, Amended Application at  
9 13–14.  
10

11 Despite the Columbia River Gorge’s remarkable nature, the scenic impacts assessment in  
12 the Application utterly fails to factor the landscape’s importance into the substantive analysis.  
13 The cultural significance of the Gorge landscape is completely ignored in the Application’s  
14 analyses of scenic quality and viewer sensitivity for the simulated views. *See* Amended  
15 Application at 4.2-34, 4.2-57–4.2-63. This error is repeated throughout the Applicant’s  
16 analysis, and as a result, numerous nationally significant views are undervalued. This failure  
17 was confirmed by the Applicant’s witness, who said the Application does not contain any  
18 discussion of how the cultural and historic importance of Gorge landscape was factored into the  
19 viewer sensitivity analysis for individual viewpoints. Jan. 4, 2011 Tr. at 323, lines 19–24.  
20  
21

22 The “Landscape Scenic Quality Scale” provided in the Application states that the  
23 “outstanding” rating is reserved for “regionally or nationally” significant landscapes. Amended  
24 Application at 4.2-29, Table 4.2-4. And yet the individual visual quality ratings fail to identify  
25 a single affected view as “regionally or nationally” significant, despite the publicly recognized  
26  
27  
28

1 significance of the Columbia River Gorge landscape discussed above. Amended Application at  
2 4.2-34, 4.2-57–4.2-63.

3         These oversights fundamentally undermine the entire scenic impacts analysis. For  
4 example, Viewpoint 14 (Viento State Park) is part of the Lewis and Clark Trail, contains a  
5 trailhead for the HCRH, and is representative of views from three designated KVAs (the  
6 Columbia River, the HCRH, and I-84). Exs. 8.17c, 8.18c, 21.02 at 3, 21.04. Yet the “Scenic  
7 Quality” analysis and “Viewer Sensitivity” analysis make absolutely no reference to the  
8 existence of these designations and how they affect scenic quality and viewer sensitivity.  
9 Amended Application at 4.2-61. The National Park Service states that this view is “critically  
10 important” to the Lewis and Clark National Historic Trail, which removes any doubt as to the  
11 cultural significance of the view. Ex. 21.04 at 1. And according to the U.S. Forest Service, the  
12 view has outstanding visual quality and is highly sensitive. Ex. 21.06, 21.02 at 2. Because this  
13 is a “nationally significant,” “picture-postcard” view (Amended Application at 4.2-29), the  
14 view should have been given an “outstanding” rating instead of a “moderate” or “high” rating.  
15 See Amended Application at 4.2-61. Amended Application at 4.2-34, 4.2-57–4.2-63.<sup>4</sup>

16         The Application provides a list of factors that were supposed to be used in the final  
17 impacts analysis of the simulated viewpoints. Amended Application at 4.2-65. One factor is  
18 “[t]he extent to which the affected environment contains places or features that have been  
19 designated in plans or policies for protection or special consideration.” Amended Application at  
20

---

21  
22  
23  
24  
25         <sup>4</sup> The viewer sensitivity and scenic quality for numerous viewpoints do not address the cultural  
26 significance of the view. Viewpoints 11, 12, and 13 (Amended Application at 4.2-60) are neither  
27 recognized for being located along the Lewis and Clark Trail nor for being designated KVAs.  
28 Viewpoint 22, Cook-Underwood Rd (Amended Application at 4.2-63); Viewpoint 1, Pucker Huddle  
(State Route 141) (Amended Application at 4.2-34); and Panorama Point, Viewpoint 10 (Amended  
Application at 4.2-59) are similarly not recognized as designated KVAs.

1 4.2-65. But this factor is consistently ignored throughout the analysis of individual viewpoints.  
2 *See* Amended Application at 4.2-68–4.2-72. Once again, that fact that viewpoints are Scenic  
3 Area KVAs and part of the Lewis and Clark National Historic Trail is not considered in the  
4 analysis, much less the extent that plans and policies call for protection or special consideration  
5 of the affected environment. For example, these federal designations are not discussed in the  
6 analysis of impacts to the view from Viento State Park (Viewpoint 14), views from Interstate  
7 84 and the Columbia River (Viewpoints 11, 12, and 13), and views from Cook-Underwood  
8 Road, State Route 141, and Panorama Point (Viewpoints 22, 1, and 10 respectively), which are  
9 all designated KVAs. Amended Application at 4.2-68–4.2-72.  
10  
11

12       Incredibly, when confronted with this failure, the Applicant’s witness maintained that the  
13 “affected environment” was limited to the project boundary. Jan. 4, 2011 Tr. at 352–53.  
14 Similarly, the Application arbitrarily defines the “local landscape” to be limited exclusively to  
15 the Project boundary and haul route. Amended Application at 4.2-32–4.2-33. The Applicant’s  
16 witness steadfastly defended this bizarre position at the hearing. Jan. 4, 2011 Tr. at 342–45. The  
17 Applicant’s narrow confinement of the area of analysis to the Project area is a direct attempt to  
18 avoid having to admit that the Project would directly harm views from the Columbia River  
19 Gorge National Scenic Area and would undermine extensive efforts to protect this remarkable  
20 landscape for future generations.  
21  
22

23       Simply making one passing reference to key viewing areas is not sufficient. *See*  
24 Amended Application at 4.2-78. The affected landscape’s cultural, historic, and scenic  
25 significance must be addressed in the scenic quality ratings, viewer sensitivity analysis, and  
26 final impacts analysis for each viewpoint. The Application fails to address the importance of  
27  
28

1 views from the Lewis and Clark National Historic Trail, the Columbia River Gorge National  
2 Scenic Area KVAs, and the Historic Columbia River Highway. As explained by the National  
3 Park Service, the U.S. Forest Service, and the Friends of the Historic Columbia River Highway,  
4 the views of this landscape are critical to the experience of visitors to the Gorge. Exs. 8.19c,  
5 21.02 at 2, 21.04 at 1.

7 The Applicant's systematic disregard for the national significance of the affected  
8 landscape is evidenced throughout the analysis. As a result, numerous nationally significant  
9 views were undervalued. The Application is in error and cannot be relied upon.

11 **4. The record contains an unprecedented amount of expert commentary**  
12 **uniformly concluding that the Project will cause unacceptable adverse**  
13 **impacts to scenic landscapes that are critical aspects of our national**  
14 **heritage.**

15 **a. Landscape architect Dean Apostol, a leading expert in his field, has**  
16 **thoroughly analyzed the Application and concluded its analysis is**  
17 **flawed and that the Project would cause significant adverse impacts**  
18 **to scenic resources.**

19 Dean Apostol, a licensed landscape architect with more than 31 years of experience in the  
20 public and private sector who is viewed by his peers as a leading expert, has concluded that the  
21 proposed Project will adversely affect scenic resources. Exs. 21.00, 21.01; Public Comment  
22 #297; Jan. 5, 2011 Tr. at 567:23–25. Mr. Apostol's testimony provides a robust background  
23 description of scenic resource assessment procedures and an expert review of the scenic  
24 resource assessment in the Application. Exs. 21.00. Mr. Apostol has concluded that the  
25 Applicant's methodologies are flawed and that the Project would cause significant impacts to  
26 scenic resources. Ex. 21.00.

27 ///

1 Mr. Apostol first explained the basic process for evaluating scenic impacts. Impacts to  
2 scenic resources are measured by evaluating the degree of contrast between a new development  
3 and the landscape's existing forms, lines, colors, and textures. Ex. 21.00 at 4-5. In highly  
4 scenic landscapes, moderate or high contrast development seen from viewpoints with sensitive  
5 viewers results in significant impacts. Ex. 21.00 at 4-5, 13:5-6; *see also* Ex. 8.13c at 88 (The  
6 FHWA Manual states: "Visual Impact = Visual Change + Viewer Response."). Contrast is  
7 generally reduced if new development "blends" into the existing landscape by repeating the  
8 landscape's existing elements. Ex. 21.00 at 4:2-4. It is nearly impossible to blend large-scale  
9 wind facilities into most scenic landscapes, because their size, design, and color do not repeat  
10 elements found in predominately natural or pastoral landscapes. Ex. 21.00 at 3-5; Ex. 21.04 at  
11 2; Amended Application at 4.2-64; Jan. 4, 2011 Tr. at 231-33 (white objects contrast with  
12 natural landscapes).

13  
14  
15  
16 Based on federal designations for scenic protection, existing scenic resource inventories,  
17 and personal study of the landscape, Mr. Apostol concluded that the landscape surrounding the  
18 proposed Facility has outstanding scenic quality. Ex. 21.00 at 9:5-9, 13-14. Based on the  
19 formal designation of affected KVAs as important public viewing areas, Mr. Apostol concluded  
20 that viewers from KVAs should be considered highly sensitive. Ex. 21.00 14:4-12. Finally,  
21 based on his review of the proposal presented in the Application, his understanding of scenic  
22 resource management principles, and the extraordinary difficulty of blending large-scale wind  
23 facilities into highly valued scenic landscapes, Mr. Apostol concluded that the proposed Project  
24 would contrast highly with the landscape causing significant adverse impacts. Ex. 21.00 at  
25 29:6-22. Mr. Apostol's premises and conclusions are thoroughly corroborated by comments  
26  
27  
28

1 from expert agencies, other experts in scenic resource management, the various scenic resource  
2 assessment manuals, and extensive comments from the public. *See generally* Exs. 21.02, 21.03,  
3 21.04, 21.05; Jan. 5, 2011 Tr. at 565-68; Public Comments #61.02, #297, #398.  
4

5 Mr. Apostol's testimony, in conjunction with comments and recommendations from  
6 expert agencies, has not been refuted and should be relied on by the Council in recommending  
7 denial of the Project.

8 **b. The U.S. Forest Service found systemic flaws in the Applicant's scenic impacts analysis and recommended removing all turbines visible from designated Key Viewing Areas to protect the scenic resources of "one of America's natural wonders."**  
9  
10

11 The record includes two U.S. Forest Service comments addressing the likely adverse  
12 impacts of the proposed wind turbines to scenic resources. Exs. 21.02, 21.03. The Forest  
13 Service scenic impacts analysis was performed by Diana Ross, a Landscape Architect at the  
14 Forest Service's Columbia River Gorge National Scenic Area office who has decades of  
15 experience analyzing impacts to scenic resources. Ex. 21.02 at 1; Public Comment #297; Jan. 5,  
16 2011 Tr. 567:23-25.  
17  
18

19 The Forest Service explained that the Gorge is "one of America's natural wonders known  
20 worldwide for its scenic beauty and variety and quality of its recreational opportunities." Ex.  
21 21.02 at 1. The Forest Service criticized the Application for failing to adequately explain the  
22 methodologies for evaluating viewer sensitivity and scenic quality, which generated results that  
23 "do not represent the reality of the Scenic Area." Ex. 21.02 at 2.  
24

25 The Forest Service also criticized the Application for failing to use contrast ratings as a  
26 basis for final conclusions on scenic impacts. Ex. 21.02 at 2. The Forest Service explained that  
27 the scenic impacts analysis should have reflected that the views from KVAs are "high  
28

1 sensitivity” and Gorge landscapes are “high quality.” Ex. 21.02 at 2. These conclusions are  
2 ultimately rooted in the Forest Service’s exhaustive scenic resource inventories of the affected  
3 landscape. *See* Exs. 8.15c at I-1–I-2, 21.06.  
4

5 The Forest Service recommended that turbines visible from KVAs be removed because  
6 they would be highly contrasting in a high quality landscape seen by highly sensitive viewers:

7 In order to prevent the scenic impact of the turbines visible from the Scenic Area  
8 Key Viewing Areas, I also recommend that the applicant eliminate turbine  
9 locations found to be visible from Scenic Area KVAs.

10 Ex. 21.02 at 4. The Forest Service’s conclusions and recommendations, corroborated by Mr.  
11 Apostol, the National Park Service, and other commenters, should be adopted.

12 **c. The National Park Service has concluded that the Project would**  
13 **cause unacceptable adverse impacts to scenic resources, and**  
14 **recommended removal of turbines to reduce the Project’s adverse**  
15 **impacts to views from National Scenic Trails within the Columbia**  
16 **River Gorge.**

17 Two National Park Service comments in the record conclude that the Project would cause  
18 unacceptable adverse impacts to scenic resources. Exs. 21.04, 21.05. According to the Park  
19 Service, the scenic impacts analysis in the Application ignores potential impacts to views from  
20 the national trails within the Columbia River Gorge. Exs. 21.04 at 1; *see also* Jan. 4, 2011 Tr. at  
21 319–25 (Mr. Pearson concedes that there is no record of considering the cultural and historic  
22 significance of the Lewis and Clark Trail in the viewer sensitivity analysis). These include the  
23 Lewis and Clark National Historic Trail, the Oregon Pioneer National Historic Trail, and the  
24 Ice-Age Floods National Geologic Trail. The views from these trails are indisputably one of the  
25 most important aspects of our national heritage.  
26  
27  
28

1 The Park Service explained that the Lewis and Clark National Historic Trail and the  
2 Oregon Pioneer National Historic Trail both run within five miles of the Project and include  
3 State Route 14, Interstate 84, and the Columbia River as travel routes. Ex. 21.04 at 1. The Park  
4 Service emphasized, “The viewshed from both the river and auto tour routes is a critical part of  
5 the visitor experience” and the designation of the National Scenic Area increases the  
6 importance of these scenic landscapes. Ex. 21.04 at 1. The Park Service continued,  
7

8 It is important for the NPS to ensure that the scenic and historic values of these  
9 areas are preserved from gross alteration of the landscape and viewshed by  
10 large-scale industrial development . . . . The Columbia River Gorge area is  
11 significant because of the area’s scenic and historic qualities. Man-made  
12 structures, especially when movement of a structure acts as an additional point  
13 of focus, depreciate the scenic and historical qualities that originally warranted  
14 national protection . . . . We are concerned with the cumulative impacts to the  
15 viewshed resulting from numerous uniform wind turbines extending beyond the  
16 horizon line within an open, natural landscape.

17 Ex. 21.04 at 2. The Park Service arrived at the following conclusion:

18 We believe it is clear, even at this early stage, that visual impacts to the CGNSA  
19 and the national historic trails will degrade the core scenic and historic  
20 landscape values of these resources. We strongly recommend at minimum  
21 removing turbine corridor A1 – A7 from further project consideration. This  
22 would help reduce the impact of visual resources within the CGNSA and along  
23 the national historic trails.

24 Ex. 21.04 at 3. The Park Service reiterated its concerns and recommendations in a subsequent  
25 letter. Ex. 21.05.

26 The Lewis and Clark National Historic Trail through the Gorge is one of the most  
27 important aspects of our national heritage found anywhere in the State of Washington and must  
28 be protected. Again, the analysis and conclusions corroborate Mr. Apostol’s analysis and  
contradict the conclusions put forward by the Applicant. The Council must rely on this  
irrefutable expert commentary.

1                   **d.     Jurgen Hess, former lead landscape architect for the National Scenic**  
2                   **Area, has concluded that the Project would cause very high adverse**  
3                   **impacts to scenic resources and that denial is warranted under the**  
4                   **National Academy of the Sciences’ standards.**

5                   The Council also has the benefit of hearing from Jurgen Hess, former lead landscape  
6 architect and environmental planner for the Forest Service’s Columbia River Gorge National  
7 Scenic Area office. Jan. 5, 2011 Tr. at 565–68; Ex. 61.02; Public Comments #297, #398. Mr.  
8 Hess’s 42 years of experience include 34 years working for the Forest Service, including  
9 preparing the scenic resource inventories and developing and applying the standards for  
10 protecting the scenic resources of the National Scenic Area. Ex. 61.02 at 1, 5. Mr. Hess’s  
11 institutional knowledge and expertise in scenic resource impacts analysis is a vital asset to the  
12 Council’s deliberations. Mr. Hess submitted oral testimony, three written comments, and a  
13 video depicting real-world scenic impacts of wind energy facilities. Jan. 5, 2011 Tr. at 565–68;  
14 Ex. 61.02; Public Comments #297, #398.

15                   Mr. Hess’s contributions to these proceedings provide valuable background on the  
16 sensitivity of views from KVAs, technical guidance on creating accurate visual simulations,  
17 and recommendations for which viewpoints should be simulated for this Project. Jan. 5, 2011  
18 Tr. at 565–68, Ex. 61.02; Public Comment #297. Mr. Hess also pointed out that reliance on  
19 foreground vegetation along Interstate 84 to screen the project would “not meet professional  
20 standards” for scenic impact mitigation. Public Comment #398 at 1. Mr. Hess ultimately  
21 concluded that there would be “very high” impacts from twelve viewpoints, “high” impacts  
22 from three viewpoints, “moderate to high” impacts from two viewpoints, and “moderate”  
23 impacts from four viewpoints. Ex. #61.02 at 4.  
24  
25  
26  
27  
28

1 Mr. Hess also noted that Diana Ross, the Landscape Architect who prepared the Forest  
2 Service's scenic impacts comments, and Dean Apostol are two of the highest qualified experts  
3 on scenic resources in the region. Public Comment #297. Based on independent review of the  
4 materials in the record, Mr. Hess concluded that he agreed with the statements of the Forest  
5 Service and Mr. Apostol, bolstering their conclusions that the Project would cause unacceptable  
6 adverse impacts to nationally significant scenic resources. Public Comment #297; Jan. 5, 2011  
7 Tr. at 566:16–18, 567:23–25.  
8

9  
10 Finally, Mr. Hess directed the Council's attention to a National Academy of the Sciences  
11 ("NAS") publication, *Environmental Impacts of Windy Energy Projects*,<sup>5</sup> and quoted factors  
12 that the NAS has concluded weigh in favor of denying a project. Public Comment #398 at 2. If  
13 more than one of these factors is present for a project, the NAS believes there is sufficient  
14 justification to deny a project based on scenic impacts. Public Comment #351 at 374 (NAS  
15 Report). Relevant factors include:  
16

- 17 • Is the project located within an area of identified scenic or cultural  
18 significance?
- 19 • Would the project significantly degrade views or scenic resources of  
20 regional or statewide significance?
- 21 • Is the project on or close to a natural or cultural landscape feature that is a  
22 regional focal point?
- 23 • Is the project in a landscape area that is visually distinct and rare or unique?
- 24 • Will the project occupy an area valued for its wildness and remoteness? If  
25 these values have been specifically documented, then consideration of the  
26 appropriateness of a wind-energy project becomes even more important.
- 27 • Does the project violate a clear, written community standard intended to  
28 protect the aesthetics or scenic beauty of the area?

---

<sup>5</sup> The relevant portion (Appendix D) of the NAS publication can be found at Public Comment #351.

1 Public Comment #398 at 2; *see also* Public Comment #351 at 373–75 (NAS Report). All of  
2 these factors apply here. The Project is in the Columbia River Gorge, which is an area of  
3 identified scenic and cultural significance. *See, e.g.* Ex. 21.02, 21.03, 21.04, 21.05. The Project  
4 would degrade views of regional, statewide, and national significance. *See, e.g., id.* The Project  
5 is within a natural and cultural landscape that is a regional and national focal point. *See, e.g., id.*  
6 The landscape is visually distinct, rare, and unique. *See, e.g.,* Ex. 8.15c, 21.02, 21.06. The area  
7 has been documented for its wildness. *See, e.g.,* Ex. 8.15c, 21.02, 21.04, 21.05, 21.06. And the  
8 Project would conflict with clear, written community standards intended to protect the  
9 aesthetics and scenic beauty of the area. *See, e.g.,* Ex. 21.00 at 10–13, 21.02. Each of these  
10 questions is answered in the affirmative, providing overwhelming evidence that denial of the  
11 Project is warranted.

12  
13  
14  
15 **5. The scenic impacts analysis in the Application is riddled with  
methodological errors and omissions.**

16 **a. The Applicant invented a new methodology specifically for the  
17 Whistling Ridge Project that has not been peer reviewed nor  
18 approved by any agency with experience in scenic resource  
19 management.**

20 The Applicant’s hired consultants crafted a scenic resource assessment methodology  
21 specifically for the Whistling Ridge Project. The visual quality ratings developed by the  
22 Applicant in part “incorporated elements” of Forest Service and FHWA methodologies  
23 (Amended Application at 4.2-30), but without any transparency as to which elements were  
24 incorporated, and which elements were ignored. Moreover, the Applicant’s consultants  
25 invented their own elements and mixed them into the analysis, again without any transparency.  
26

27 ///  
28

1           The Applicant’s witness Dautis Pearson explained a process of mixing and matching the  
2 methodologies to “best facilitate what we’re after, disclosure, what are the impacts.” Jan. 4,  
3 2011 Tr. at 308:6–10. Mr. Pearson stated that the consultants “made some modifications to [the  
4 methodologies] *based on the project* and that happens relatively often in this process.” *Id.* at  
5 310:20–21 (emphasis added). Mr. Pearson said he took elements of the two federal  
6 methodologies and tweaked them “*so that we can move the project into differing ratings, if*  
7 *necessary.*” *Id.* at 311:11–16.

8  
9  
10           By Mr. Pearson’s own admission, the consultants designed the process to fit the desired  
11 outcome for this particular Project. There should be no need to “tweak” the measuring stick if  
12 the goal is to undertake a systematic and reliable process.

13           As an example of the methodological inventions, the Applicant created untested and  
14 unexplained methods of “averaging” the quality of scenic resources for its “Landscape Scenic  
15 Quality Scale.” Amended Application at 4.2-29, Table 4.2-4, Ex. 21.00 at 8–9 (Mr. Apostol  
16 critiques the Applicant’s averaging methodology). The scale states that views from selected  
17 viewpoints would be rated based on whether they are “above average,” “common or typical,”  
18 or “below average.” *Id.* However, the Application fails to identify a total data set that individual  
19 views were averaged against. If the quality of a particular view is averaged only against the  
20 views in the Gorge, then the outcome necessarily undervalues the quality of the viewshed in  
21 question. *See* Ex. 21.00 at 8–9. Indeed, the Forest Service explained that *all* views from  
22 designated KVAs in the Gorge should be considered high quality. Ex. 21.02 at 2.

23  
24  
25  
26           When asked during cross-examination, the Applicant’s witness refused to provide a  
27 straight answer on how the averages were calculated. Jan. 4, 2011 Tr. at 310–16. Nonetheless,  
28

1 it is apparent that some views were identified as “low” or “moderate” quality because they  
2 were compared to the uniformly great views of the Gorge, which is universally recognized as  
3 having outstanding views.  
4

5 For example, a view looking west from State Route 141, which is a designated KVA, was  
6 rated as “moderate,” allegedly to “reflect[] the fact that the landscape is relatively common in  
7 the region and has average scenic value.” Amended Application at 4.2-34. These subjective  
8 statements are directly contradicted by existing inventory data, which the Applicant failed to  
9 even consult. The U.S. Forest Service’s scenic resource inventory maps show views looking  
10 west from State Route 141 as distinctive, of high significance, and high sensitivity. Ex. 21.06.  
11 Accordingly, the Forest Service has explained that views from State Route 141, a designated  
12 KVA, are high quality. Ex. 21.02 at 2.  
13

14 Even despite the lack of transparency, it is clear that the Applicant designed its scale of  
15 “averages” specifically to undervalue affected views. The Application’s landscape scenic  
16 quality scale is based on inappropriate methodology and thus arrives at the wrong conclusions.  
17

18 To provide another example, the Application inappropriately factors distance into the  
19 viewer sensitivity analysis. The Application states that “high” levels of sensitivity are reserved  
20 for views within 0.5 miles of the Project, and “moderate” levels of sensitivity for views within  
21 0.5 to 5 miles of the Project. Amended Application at 4.2-30-31. Contrary to these assertions,  
22 distance does not change a viewer’s sensitivity to highly contrasting development in a  
23 landscape. If a viewer has high expectations for a view of a dramatic, natural landscape, it will  
24 not matter whether development marring that landscape is a half mile away or five miles away.  
25 Ex. 21.00 at 14:13–19; *See, e.g.*, Ex. 8.11c at 2–3 (BLM viewer sensitivity factors include:  
26  
27  
28

1 types of users, amount of use, public interest, adjacent uses, and special areas, and other factors  
2 not including distance).

3 This does not mean that distance is irrelevant to a scenic impacts analysis. As Mr.  
4 Apostol stated, “[w]hat distance changes is the *degree of contrast* experienced. At greater  
5 distances contrast is reduced and thus visual impacts normally decrease.” Ex. 21.00 at 14:16–19  
6 (emphasis added). But the viewer’s expectations (*i.e.*, sensitivity) remain the same. In fact, as  
7 explained by the Forest Service and leading experts, viewers from designated KVAs are by  
8 definition highly sensitive. Exs. 8.15c at I-7; 21.02 at 2; Public Comments #61.02 at 1; #297 at  
9 1.  
10

11  
12 In addition, the Applicant’s treatment of distance zones grossly underestimates the  
13 potential impacts to views. According to the relevant manuals, conventional development  
14 within five miles from a viewpoint is “more likely to trigger public concern.” Exs. 8.13c at 116  
15 (FHWA manual); 8.11c at 3–4 (BLM). At distances beyond five miles, impacts can still be  
16 significant, but the likelihood is reduced, because at greater distances contrast is reduced.  
17 Amended Application at 14:13–19, 6:1–3; Jan. 4, 2011 Tr. 244:6–10 (Mr. Watson admits  
18 turbines can be contrasting and visible up to and beyond 10 miles). The Applicant claims to be  
19 applying the FHWA Manual, but arbitrarily assigns a “moderate” sensitivity rating for all  
20 viewpoints between 0.5 and 5 miles away from the Project, directly contradicting the FHWA  
21 manual. Amended Application at 4.2-30.  
22

23  
24 The Applicant’s flawed approach is evidenced by Mr. Pearson’s rebuttal testimony,  
25 which equates the “viewer sensitivity” analysis in the Application to “landscape sensitivity” as  
26 defined in the Forest Service’s scenic resource inventory. Ex. 9.02r at 14:13–19; *see also* Ex.  
27  
28

1 21.06; Ex. 8.15c at I-2. The Applicant seems to be unaware that viewer sensitivity and  
2 landscape sensitivity are two different things. “Landscape sensitivity,” as used by the Forest  
3 Service, is measurement of the significance of a landscape and the ability of the landscape to  
4 absorb new development without diminishing scenic quality. Ex. 21.06 at 7 (“Landscape  
5 Sensitivity” map); Ex. 8.15c at I-2 (Management Plan explanation of the contents of the  
6 “Landscape Sensitivity” map). Viewer sensitivity, on the other hand, is the “preferences,  
7 values, and opinions of user groups” as documented by user activities, local values, and  
8 “cultural significance of the visual resources.” Ex. 8.13c at 68.  
9  
10

11 The Forest Service’s landscape sensitivity map simply does not depict “viewer  
12 sensitivity” as the term is used by Mr. Pearson. Mr. Pearson’s confusion between landscape  
13 sensitivity and viewer sensitivity underscores the lack of credibility in his analysis and  
14 testimony.  
15

16 These are just some of the examples of the Applicant’s many significant methodological  
17 flaws noted by the federal agencies and other commenters. The Forest Service criticized the  
18 Application for failing to track the methodologies used to assess landscape quality and viewer  
19 sensitivity, as well as the failure to use contrast ratings in the final scenic impacts conclusions.  
20 Ex. 21.02 at 2. The Park Service also disagreed with fundamental assumptions in the analysis.  
21 Ex. 21.04 at 3. And expert witness Dean Apostol found numerous flaws in the analysis and  
22 concluded that scenic resource assessment principles had been distorted, leading to erroneous  
23 conclusions that were not based on visual contrast ratings. Ex. 21.00 at 7–9, 12:14–17.  
24  
25

26 The Applicant’s methodologies were created entirely behind closed doors, without any  
27 transparency. *See* Jan. 4, 2011 Tr. at 318–19, 320:12–13, 321:15–24. Because it was a closed-  
28

1 door process, there was no peer review by any leading experts or by any agencies with  
2 expertise in scenic resource management. The lack of transparency left the Forest Service and  
3 National Park Service lost as to the methodologies used in the scenic impacts analysis.  
4

5 Incredibly, the Applicant's witness claimed that peer review and transparency were  
6 achieved by reviewing the methodology within the consultant's own firm. *See* Tr. at 318–20,  
7 321:15–24. But there is not even any evidence that even one qualified landscape architect was  
8 involved in developing or reviewing this new process.  
9

10 In the end, closed-door decisions that leave agency experts mystified as to what led to the  
11 conclusions in the Application should not be relied upon by the Council. Without any  
12 transparency and without any peer review by qualified experts, there is no way that the Council  
13 can rely on the Applicant's fabricated, results-driven process.  
14

15 **b. The Application fails to consider available planning and inventory**  
16 **materials to evaluate the scenic impacts to the affected environment,**  
17 **and instead applies the Federal Highway Administration Manual,**  
18 **which is not well-suited for review of wind energy projects.**

19 As discussed above, the Applicant invented its own methodology for analyzing the scenic  
20 impacts of this Project. This methodology borrowed heavily from the Federal Highway  
21 Administration Manual but also included elements created by the Applicant's consultants. This  
22 approach was particularly unnecessary, because existing, time-tested scenic resource  
23 methodologies are available, and inventories of major portions of the affected landscape have  
24 already been mapped. Furthermore, the FHWA system is not appropriately applied to wind  
25 energy projects.  
26

27 The Applicant should not have used the FHWA system. Either the Bureau of Land  
28 Management Visual Resource Management System or exclusive use of the Forest Service's

1 Scenery Management System should have been applied instead. *See* Ex. 21.00 at 8:1–4, 17–18.<sup>6</sup>

2 As witness Dean Apostol testified, both the BLM and Forest Service assessment systems are  
3 better designed and suited for evaluating wind energy projects:  
4

5 [T]he FHWA method is not a suitable method for evaluating the visual impacts  
6 of wind energy projects in general, and this project in particular. The FHWA  
7 visual impact system was designed to be used only for assessing impacts from  
8 highway related development. It contains no process or method for assessing the  
9 visual contrast presented by wind turbines or other energy facilities (such as  
10 power lines). . . . Compared to the Forest Service and BLM methods, the FHWA  
11 process is not as flexible and cannot be easily adapted to different project types.  
12 . . . BLM has developed a programmatic EIS that specifically addresses visual  
13 impacts of wind turbines, and has created guidelines for assessing and mitigating  
14 visual impacts of wind turbines. As far as I know, the FHWA method has never  
15 been updated to address impacts from wind energy development.

16 *Id.* at 7–8.

17 In addition, because the National Scenic Area is immediately adjacent to the Project and  
18 is a major part of the affected environment,<sup>7</sup> Scenic Area materials should be used to measure  
19 the Project’s impacts. *See* Ex. 21.00 at 10–11. Because the Scenic Area materials simply  
20 implement standard Forest Service methodologies and contrast ratings. *See* Ex. 21.00 at 13:1–6  
21 (Mr. Apostol testified how Scenic Area standards correlate to BLM manual and Forest Service  
22 manual contrast ratings). Using this material would provide a simple, reliable, and consistent  
23 tool to measure the impacts.

24 The Applicant has been particularly resistant to this concept, even though the Applicant  
25 claims to use parts of the Forest Service’s methodologies, which are the basis of the Scenic

---

26 <sup>6</sup> Both the BLM and Forest Service methodologies can be used to evaluate proposed  
27 development located on private land that lacks established visual quality objectives. *See, e.g.*, Ex. 8.14c  
28 at 12 (“The Scenery Management System may also serve needs for scenery management outside  
national forests in the United States and other parts of the world.”); Ex. 21.00 at 10–12.

<sup>7</sup> The Department of Commerce’s witness, Mr. Leonard Bauer, stated that the “affected  
environment” for this Project includes the National Scenic Area. Jan. 5, 2011 Tr. at 478–80.

1 Area materials and also used on federal land to the immediate northeast of the Project in the  
2 Gifford Pinchot National Forest. While National Scenic Area inventories, policies, and  
3 guidelines have no regulatory control over the proposed wind turbines, neither do the selected  
4 elements of the Forest Service and FHWA standards purportedly applied by the Applicant.  
5

6 The Application inappropriately relied on the FHWA materials. Instead, the BLM and/or  
7 Forest Service system should be applied. In addition, the Scenic Area inventories, plans,  
8 policies can and should be used to measure the Project's impacts. Once the extent of the likely  
9 impacts is properly evaluated using existing planning documents, the Council must ultimately  
10 determine whether the impacts are unacceptable under its own laws and rules.  
11

12 **c. The Application fails to simulate multiple important views.**

13 The Applicant fails to provide simulations of several important views, including the  
14 Historic Columbia River Highway directly south of the Project,<sup>8</sup> Washington State Route 14,  
15 hiking trails and destinations in the Gifford Pinchot National Forest northwest of the Project,  
16 and recreational sites on Washington DNR lands north of the Project.  
17

18 According to Figure 4.2-5 in the Amended Application, six to fifteen turbines would be  
19 visible from long stretches of the HCRH from Viento State Park to Hood River, including the  
20 Mitchell Point overlook. Amended Application at 4.2-35.<sup>9</sup> Below is a copy of that figure,  
21 enlarged to better show the number of turbines that would be visible from Mitchell Point.<sup>10</sup>  
22  
23

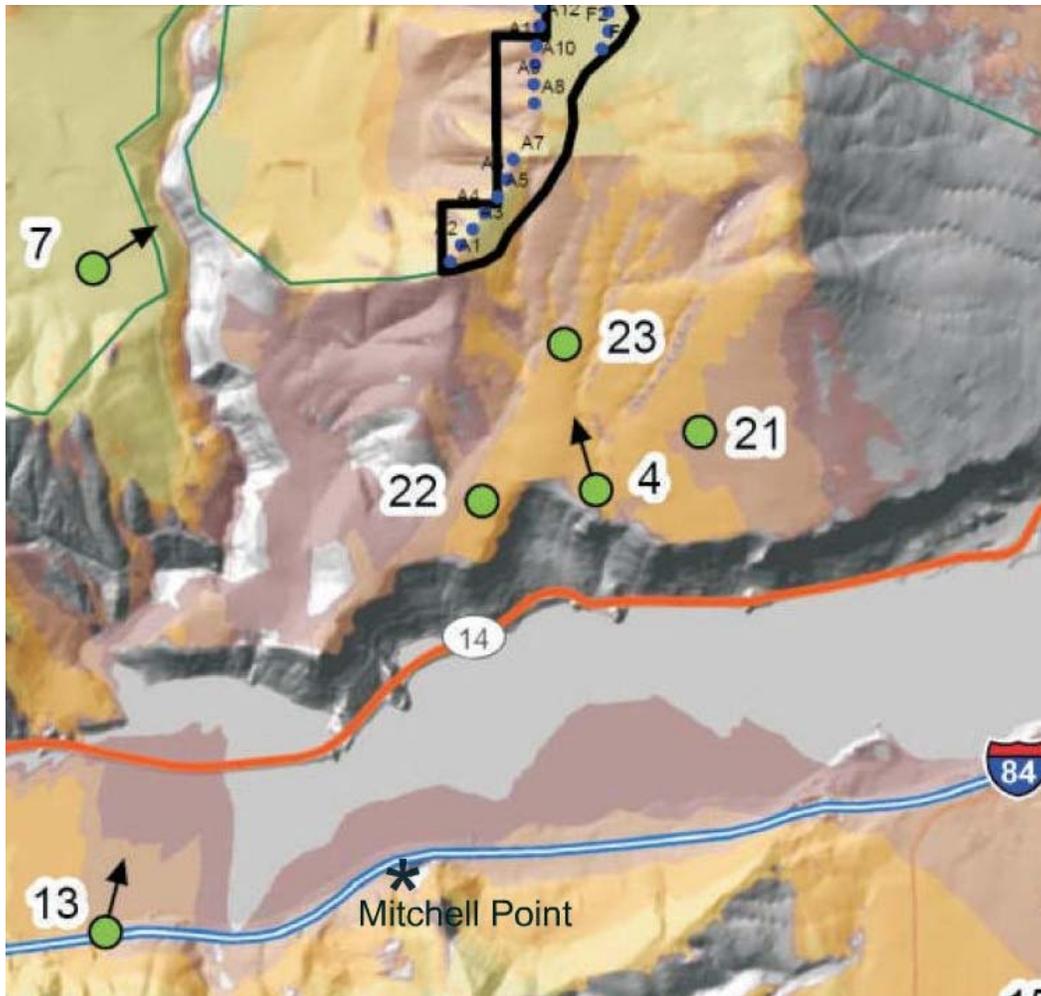
---

24 <sup>8</sup> The Applicant arbitrarily chose to simulate only a single spot along the HCRH, at a location  
25 between Hood River and Mosier. Amended Application at 4.2-22.

26 <sup>9</sup> Because the Applicant has not disclosed the number and location of proposed turbines, it is  
27 unknown how many turbines would be visible from important views from the south of the Project.

28 <sup>10</sup> At the hearing, the Council requested that an enlarged view of this figure be presented to  
clarify this issue during briefing. Jan 4, 2011 Tr. at 258-59. As Council Member Moss noted, it is very  
difficult to tell the difference between colors on the Applicant's map, and thus difficult to understand  
how many turbines would be visible from specific locations. When the Applicant revises the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



This stretch of the Historic Highway includes portions of the HCRH Historic District and is part of high-priority efforts to enhance and restore the Highway as a world-class recreational resource. Exs. 8.17c, 8.18c, 8.19c, 21.07; Public Comment #210. As evidenced by numerous

Application to provide details on the locations and number of proposed turbines, Friends suggests the use of an easily distinguishable palette of colors.

1 comments, it is a gross oversight to not prepare any substantive analysis of views from this  
2 stretch of the HCRH. *Id.*

3 Mr. Watson testified that no simulations were prepared because he believed only two or  
4 three turbines would be visible from the Mitchell Point overlook when vegetative screening is  
5 taken into consideration. 8.03R at 16–17. Mr. Watson is wrong. The Application itself shows  
6 that six to fifteen turbines would be visible from this location, as shown in the preceding figure.  
7 Moreover, trees are ephemeral. Any trees that could potentially screen turbines from view at  
8 the Mitchell Point overlook are not under the control of the Applicant, and cannot be relied  
9 upon to screen the Project from this important viewing area.<sup>11</sup> This is why landscape aesthetics  
10 professionals focus on topographical screening and *on-site* vegetative screening of projects, not  
11 *off-site* vegetative screening, as a proper means of assessing and mitigating impacts. *See* Public  
12 Comment #398 at 1–2.

13 Moreover, numerous turbines would be visible from multiple important viewing  
14 locations along the Historic Columbia River Highway corridor, including at least fourteen  
15 proposed static viewpoints along the HCRH and trails along the hillsides. Ex. 8.18c (HCRH  
16 restoration plans depicting 14 static viewpoints, not including other viewing opportunities  
17 along the HCRH corridor); Ex. 8.20c (Oregon State Park facility descriptions).

18 ///

19 ///

---

20  
21  
22  
23  
24  
25  
26  
27  
28  
<sup>11</sup> The Scenic Area Act specifically exempts forest practices in the General Management Area from scenic resource protection standards. 16 USC § 544o(c). Thus, forest lands between the Project and the HCRH to the south could be clearcut without any consideration of impacts to scenic resources. Off-site forest land cannot be used as a reliable mechanism to screen the Project from important views.

1           Ultimately, even without visual simulations, the evidence shows that there would be  
2 significant impacts to views from the south shore of the Columbia, whether two turbines or  
3 fifteen turbines are visible. Ex. 8.19c; Public Comment #210.

4  
5           The Application also ignores Washington State Route 14, which is a state-designated  
6 scenic byway. Figure 4.2-5 from the application shows that the Project would be potentially  
7 visible from a long stretch of State Route 14 to the east of White Salmon, Washington and from  
8 a short segment along Drano Lake to the west of White Salmon. Amended Application at 4.2-  
9 35. The Applicant's witness testified that the Project would be visible from limited locations in  
10 Bingen; however, no simulations were prepared and no analysis was included in the  
11 Application. Jan. 4, 2011 Tr. at 278:1-25, 279:1-9.

12  
13           Finally, the Application fails to consider or model views from several popular hiking  
14 trails and scenic destinations on public lands in the mountains north and northwest of the  
15 Project. *See* Ex. 21.00 at 15:5-7.<sup>12</sup> Visitors to these areas come expecting outstanding views of  
16 Washington's South Cascades and of Mount Hood to the south. Views from these areas were  
17 not acknowledged, and no simulations were prepared.

18  
19  
20           **d.       The visual simulations in the Application underrepresent the  
Project's impacts.**

21           As pointed out by numerous commenters, the visual simulations in the Application are  
22 very misleading. *See, e.g.*, Ex 21.00 at 19-22 (general discussion of visual simulations), 22-27  
23 (detailed review of the Applicant's simulations); Public Comment #351 at 351-55; Ex. 8.16c  
24 (general background on standards for visual simulations). Several simulations have cloudy  
25

26  
27  
28           <sup>12</sup> In fact, there is not a single simulation of the Project as viewed from the north, northwest, or  
northeast.

1 backgrounds, thus reducing contrast. Amended Application at 28:10–11; Ex. 21.02 at 3–4, Ex.  
2 21.04 at 2, Ex. 61.02 at 2. Some turbines are backlit in the simulations, thus creating shadows  
3 that mute contrast. Ex. 61.02 at 2. Composite panoramic simulations are used, which can  
4 effectively move turbines further into the distance than they would appear in reality. Ex 20.00  
5 at 21:3–13, 28:18-19, Public Comment #61.02 at 1–2. Numerous simulations have excessive  
6 clutter in the foreground that distracts from the view. Ex. 21.00 at 26:14–20; *see generally*  
7 Public Comment #351 at 353. And the simulations fail to include proposed infrastructure, such  
8 as roads. Ex. 21.00 at 27:9–12, Public Comment #61.02 at 1–2.

9  
10  
11 These concerns, raised by multiple commenters, must be addressed. As evidenced by  
12 testimony from Mr. Apostol and comments by the Forest Service, assessing contrast is critical  
13 to scenic impacts analysis. Exs. 21.00 at 4–5; 21.02 at 2. Diminishing contrast directly  
14 undervalues impacts. The simulations underrepresent the Project’s scenic impacts and must be  
15 improved, so that the Council, the parties, and the public can understand the true scenic impacts  
16 of the proposed Project.

17  
18 **e. The Application’s conclusions on scenic impacts are inconsistent**  
19 **with the conclusions of the leading scenic resource experts and**  
20 **expert agencies on scenic resources, and do not follow from the**  
21 **analysis in the Application.**

22 The Application includes Table 4.2-5, which is a “Summary of Existing Scenic Quality  
23 Assessment and Project Visual Impacts.” Amended Application at 4.2-67 (Table 4.2-5). Table  
24 4.2-5 provides a brief summary of visual quality, viewer sensitivity, and anticipated levels of  
25 impact for each simulated viewpoint. *Id.* The table states that impacts to all simulated  
26 viewpoints would be low or moderate. *Id.* When asked about this specific table and the absence  
27 of any “high” level impacts to views, the Applicant’s expert made no attempt to correct any  
28

1 errors. Jan. 4, 2011 Tr. at 365–66. The Forest Service specifically criticized Table 4.2-5 for not  
2 including the “degree of contrast with the natural landscape,” which is the central element of a  
3 scenic impacts analysis. Ex. 21.02 at 2. The Forest Service also criticized the Table for  
4 concluding that all impacts would be “low” to “moderate,” while the textual analysis, even with  
5 its flaws, evidenced high impacts. *Id.*

7 Ultimately, the failure of the Application to acknowledge a single significant scenic  
8 impact from the Project, plus the uniform criticism of the Application’s analysis raised by  
9 broad range of stakeholders, ought to raise some red flags for the Council. Conclusions  
10 remarkably at odds with analysis from expert agencies must be thoroughly scrutinized.<sup>13</sup>

12 **f. The Application fails to adequately address the impacts of the**  
13 **Project’s lighting and completely ignores the impacts of moving**  
14 **turbine blades.**

15 The Application also fails to adequately address the impacts of the proposed Project’s  
16 aviation safety lighting. Ex. 21.00 at 28: 17. As confirmed by the Applicant’s witness, the  
17 Application considered impacts from nighttime lights only on residences in close proximity to  
18 the Project. Amended Application at 4.2-25; Jan. 4, 2011 Tr. at 353–55. This is a fatal failing in  
19 the Applicant’s analysis, because airplane safety lighting is specifically designed to be highly  
20 contrasting with the surrounding landscape and would be highly visible from miles away. Jan.  
21 4, 2011 Tr. at 230–31, 254–55. The impacts of safety lighting were ignored, in flagrant  
22 contravention of the concerns of the Forest Service, resource experts, and others. *See, e.g.*, Exs.  
23 21.02 at 4, 21.00 at 6–7, 21.04 at 2; *see also* Public Comment #351 at 369, 372 (NAS Report).

---

27 <sup>13</sup> For an example of more reliable conclusions regarding likely scenic impacts, Mr. Hess’s  
28 testimony includes a summary table showing “high” and “very high” impacts from fifteen viewpoints.  
*See* Ex. 61.02 at 4.

1 The Application also fails to consider the scenic impacts caused by the giant, moving  
2 blades of the proposed wind turbines. Dean Apostol, the National Park Service, and Jurgen  
3 Hess all raised this concern. Ex. 21.00 at 6:12–16, 7:1-4, 28:17; Ex. 21.04 at 2; Ex. 61.02 at 1–  
4 3 ; *see also* Public Comment No. 354 at 22 (Bloch Comment).<sup>14</sup> The Application not only  
5 failed to include this consideration in its impacts analysis, but Mr. Pearson steadfastly refused  
6 to acknowledge the extent that movement increases contrast. This failure further undermines  
7 his credibility. Jan. 4. 2011 Tr. at 355–57. The Applicant’s other scenic resource witness, Mr.  
8 Watson, admitted that blade movement increases contrast and that, under proper viewing  
9 conditions, movement of turbine blades can be visible 15 miles from a wind facility. Jan. 4,  
10 2011 Tr. 240:17-22, 244:6–10; Ex. 21.00 at 5:1–3.

11  
12  
13 Mr. Watson also acknowledged that the wind industry has developed a program called  
14 WindPro specifically to model movement, but that the Applicant failed to use that program to  
15 model the scenic impacts of this Project. Jan. 4, 2011 Tr. at 249:1-9. Because movement  
16 contributes substantially to the scenic impacts of wind projects, the Applicant needs to prepare  
17 animations so that the Council and public can understand and evaluate the full impacts of the  
18 Project. *See, e.g.*, Ex. 21.00 at 22:3–7, 28:17; Ex. 61.02 at 2. The Application fails to properly  
19 disclose and consider the extent that movement of turbine blades would increase the scenic  
20 impacts of the Project.  
21  
22

23 ///

24 ///

25 ///

---

27 <sup>14</sup> Mr. Hess also submitted a video showing the hypnotic impacts of moving wind turbine  
28 blades. Jan. 5, 2011 Tr. at 567:18–19.

1           **6. Because the Project would cause significant adverse impacts to scenic**  
2           **resources, it should be denied.**

3           The experts and the public agree: the Whistling Ridge Project would cause unacceptable  
4           adverse impacts to scenic resources. Based on the analysis of the U.S. Forest Service, the  
5           National Park Service, guidance from multiple scenic resource assessment manuals, guidance  
6           from the National Academy of the Sciences, comments and analysis from leading experts on  
7           scenic resource assessment, and the overwhelming concerns of the public, the Council should  
8           recommend denial of the Whisling Ridge Energy Project.  
9

10          **C. The Project would substantially harm recreational resources.**

11           The Project would substantially harm recreational resources in the heart of one of the  
12           greatest recreational destinations in the world. Ex. 21.02. Hikers, kayakers, kiteboarders,  
13           windsurfers, mountainbikers, birdwatchers, and wildflower enthusiasts come from all over the  
14           globe to recreate in the vicinity. The Project site is literally surrounded by recreational  
15           resources. These include hiking trails and vantage points in the Gifford Pinchot National Forest  
16           and on nearby land owned by the Washington Department of Natural Resources. *See* Ex. 21.01  
17           at 15:5–8. Windsurfing and kiteboarding are extremely popular in the Columbia River to the  
18           south of the Project. These sites are used by a variety of users who enjoy world-class  
19           recreational opportunities, outstanding natural beauty, and dramatic panoramic views.  
20  
21

22           In addition, the Project would also be located adjacent to a burgeoning agritourism  
23           destination popular for special events. Public Comment #395 (Skamania County Agri-Tourism  
24           Association). Key to this recreational and economic activity is the remarkable views of the  
25           Columbia River Gorge landscape. The Project would be in close proximity to agritourism  
26           destinations and would detract from scenic views. *Id.*  
27  
28

1 Scenery is a central part of outdoor recreation in these areas. Imagine hiking several  
2 thousand feet to your favorite alpine area or panoramic point, or sailing the Columbia River for  
3 its unique and picturesque scenery, only to have your view dominated, or even blocked, by  
4 Boeing 747-sized industrial wind turbines. That is exactly what would occur if this Project is  
5 built.  
6

7 The Council must recognize the importance of recreational resources in the vicinity of the  
8 Project. Because of the substantial harm to these resources posed by this Project, in  
9 combination with the impacts to important aspects of our national heritage and other  
10 community interests, the Project should be denied.  
11

12 **D. The Applicant has not demonstrated that the proposed facility will have minimal**  
13 **adverse effects on wildlife and habitat.**

14 In acting upon any application for site certification, the Counsel must ensure “minimal  
15 adverse effects” to the “ecology of the land and its wildlife.” WAC 463-14-020(1). To  
16 discharge that duty, the Council may consult other agencies, including the Washington  
17 Department of Fish and Wildlife (“WDFW”). CES at 20.<sup>15</sup> However, it must ultimately assess  
18 the record itself and reach its own independent determination. As the Council explained during  
19 its 2004 rulemaking, it “will not delegate its jurisdiction to another agency.” *Id.* at 160.  
20

21 To achieve minimal adverse effects, the Council has adopted standards that require “no  
22 net loss of habitat functions and values.” WAC 463-62-040. These include minimum standards  
23 for mitigation and wildlife surveys, which must be conducted “during all seasons of the year.”  
24  
25

---

26 <sup>15</sup> The citation “CES” and corresponding number refers to the Council’s *Concise Explanatory*  
27 *Statement of WAC 463, Energy Facility Site Evaluation Council Operational Rules and Energy Facility*  
28 *Construction and Operation Standards* (Oct. 11, 2004).

1 WAC 463-62-040(2)(d), (f). The application must quantify expected wildlife impacts. WAC  
2 463-60-332(2). And in addition to meeting the Council’s own standards, the application “shall  
3 describe” how the WDFW Wind Power Guidelines “are satisfied.” WAC 463-60-332(4).  
4

5 Here, the Applicant has failed to meet each and every one of these requirements. It  
6 failed to conduct sufficient wildlife surveys. Its predictions for avian mortality fail to account  
7 for several factors, including variations in use between locations, years, and species. It neither  
8 sought out nor reviewed relevant information. And, without allowing any opportunity for the  
9 parties and the public to review and comment, it proposed a mitigation plan that fails to  
10 preserve important habitat functions and values that would be lost at the site. Given the serious  
11 threats to wildlife and habitat posed by this Project and the Applicant’s failure to adequately  
12 assess these threats, site certification should be denied.  
13

14 **1. The Applicant has failed to demonstrate that avian impacts will be low.**  
15

16 To obtain certification, an applicant must provide “a detailed discussion of temporary,  
17 permanent, direct and indirect impacts” on habitat and wildlife. WAC 463-60-332(2). These  
18 impacts “shall be quantified in terms of habitat acreage affected, and numbers of individuals  
19 affected, threatened or removed.” *Id.* And an applicant must specifically quantify “[i]mpacts to  
20 any species of local importance, priority species, or endangered, threatened, or candidate  
21 species,” both on and “adjacent to the project site.” WAC 463-60-332(2)(e), (c).  
22

23 Here, the Applicant did not even attempt to quantify impacts to non-raptor birds in  
24 terms of “numbers of individuals,” in direct violation of WAC 463-60-332(2). Instead, it  
25 analyzed impacts to those species using an “exposure index,” which the Applicant admits was  
26 not used to “determine mortality rates.” Ex. 6.04r at 4:2.  
27  
28

1 The Applicant also did not provide “[a]n assessment of risk of collision of avian species  
2 . . . during [both] day and night,” as required by WAC 463-60-332(2)(g). This is despite the  
3 fact that post-construction mortalities are often greater than predicted, because “most fatalities  
4 are among nocturnal migrants that are not accounted for during surveys.” Amended  
5 Application at 3.4-31.  
6

7 In addition to these problems, the Council cannot rely on the Applicant’s extremely low  
8 predictions for avian impacts for the reasons explained below.  
9

10 **a. The Applicant failed to perform the required full year of surveys, and**  
11 **missed peak migrations.**

12 The Applicant predicts that the proposed Project will cause 0 to 0.25 raptor fatalities per  
13 megawatt per year. Ex. 6.04r at 13:2-3. And it predicts that non-raptor fatalities will be “rare,”  
14 although it did not quantify its predictions in terms of the numbers of individuals. Amended  
15 Application at 3.4-31. These predictions were not based on the full year of surveying required  
16 by WDFW. Nor did the Applicant perform surveys in every migration season. The Applicant’s  
17 predictions cannot be relied upon.  
18

19 The Applicant spent only 87 hours<sup>16</sup> over nine months, broken into discrete 20-minute  
20 point count surveys,<sup>17</sup> to document avian use at Whistling Ridge. Ex. 22.00 at 6:14-15; DEIS at  
21 3-60.<sup>18</sup> The Applicant’s intermittent nine months of surveying violates the plain language of  
22 WDFW’s Wind Power Guidelines, which require, at a minimum, “one full year of avian use  
23

---

24 <sup>16</sup> At other sites, it has taken up to hundreds of hours to observe a single occurrence of species  
25 regularly killed by wind turbines. Ex. 22.00 at 7:6–13.

26 <sup>17</sup> A point count survey involves a series of points or stations at which birds are counted in a  
27 series of discrete, timed intervals. In this case, between six and seven observation stations were set up at  
28 the site. *See* Amended Application at figs. 3.4-7, 3.4-8.

<sup>18</sup> The Applicant conducted point count surveys between May 15 and July 14, 2006, between  
December 4, 2008 and May 29, 2009, and between September 11 and November 4, 2009. DEIS at 3-60.

1 surveys.” Ex. 9.09c at 4.

2 WDFW biologists also questioned the accuracy of the Applicant’s methods of using  
3 point counts:  
4

5 I have always been suspect of point counts for picking up migration  
6 patterns. Migration can be influenced by weather patterns and time of day. Point  
7 counts can miss these peak activity levels.

8 \* \* \*

9 I am unconvinced that periodic point counts are an appropriate method for  
10 documenting passage of migrants.

11 Ex. 6.08c at 1.

12 Ostensibly to preserve the agency status quo, those same WDFW biologists apparently  
13 felt constrained to require more accurate studies: “Problem is we have generally not raised a  
14 concern about this methodology when studies are being conducted.” *Id.* However, while  
15 WDFW’s practices and conventions may, as a practical matter, constrain that agency’s  
16 personnel, they do not prevent this Council from requiring biologically and scientifically  
17 adequate studies. Indeed, the Council’s own enabling legislation requires it to address “*any and*  
18 *all* environmental and ecological concerns related to energy facilities.” Concise Explanatory  
19 Statement of WAC 463, Energy Facility Site Evaluation Council Operational Rules at 3 (Oct.  
20 2007) (emphasis added).  
21

22 The Applicant did not meet the Council’s own standard that “wildlife surveys shall be  
23 conducted during all seasons of the year to determine breeding, summer, winter, migratory  
24 usage, and habitat condition of the site.” WAC 463-62-040(2)(f). In their review, WDFW  
25 biologists also noted the Applicant did not survey the very migration seasons when raptor use is  
26 at its peak. One biologist observed,  
27  
28

1 the period from mid-August through mid-September will have the greatest  
2 numbers of birds in passage, primarily juvenile accipiters (I noticed they started  
3 the counts in mid-Sept). Adult birds, *obviously fewer in number*, will dominate  
4 counts after mid-September including eagles and buteos.

5 *Id.* (emphasis added); *see also* Ex. 22.00 at 33:20–21.

6 When asked if he was aware of this seasonal increase in migratory behavior in raptors,  
7 the applicant’s witness Greg Johnson responded “you know, I’m not aware of that,” and  
8 disputed the WDFW’s statements only with respect to “most hawks.” Jan. 6, 2011 Tr. at 672:8-  
9 14. This testimony seriously undermines the witness’s credibility that his study schedule  
10 represents “best available science” (*id.* at 622:2), as well as his conclusion that “the area is not  
11 within a major migratory pathway,” including for eagles (Amended Application at 3.4-31).

12 Similarly, because the Applicant failed to survey the two-month period between July 14  
13 and September 11, it also missed the migration season for olive-sided flycatchers, a species of  
14 federal concern. DEIS at 3-56. This is significant: every other time that olive-sided flycatchers  
15 have been observed at the Project site, they were consistently flying at blade height,  
16 representing that the observed individual likely would have been killed. *See id.* Even the  
17 Applicant describes this fact as “*critical* to understanding the environment within which a  
18 mortality estimate is made.” Ex. 6.04r at 3:22-23 (emphasis added). Yet the Applicant failed to  
19 perform surveys in this critical season.  
20  
21

22 In sum, the Applicant failed to fulfill WDFW’s survey standards, as well as the  
23 Council’s “every season of the year” requirement. WAC 463-62-040(2)(f). The Applicant put  
24 in grossly insufficient time to assess baseline avian use and disregarded WDFW’s one full year  
25 requirement. Site certification should not go forward unless and until the Applicant complies  
26 with these requirements.  
27  
28

1                   **b.       The Applicant did not account for inter-annual variation.**

2           The Applicant argues that its nine-month wildlife survey at Whistling Ridge is  
3 sufficient because it captured “some hypothetical” inter-annual variation in use by monitoring  
4 *different* seasons in *different* years. Ex. 6.00 at 5:9-10. This argument should be soundly  
5 rejected.  
6

7           First, there is simply nothing “hypothetical” about inter-annual variation. This is the  
8 very reason WDFW requires more than a year’s study when seasonal use data is lacking. *See*  
9 Ex. 6.09c at 2. At other wind facilities, avian use varies significantly from year to year, up to  
10 twentyfold. Ex. 22.00 at 7:17–8:16.  
11

12           Second, the very suggestion that Mr. Johnson captured any inter-annual variation, let  
13 alone variation in peak migratory seasons, reveals a fundamental misunderstanding of that  
14 concept. Inter-annual variation refers to variation *between the same season* (e.g., migration  
15 season) over the course of years. Ex. 22.00 at 7:17 – 8:4. No such variation can be seen  
16 comparing *different* seasons, whether they are in different years or not. *Id.*  
17

18           In short, not only has the Applicant failed to account for any *actual* inter-annual  
19 variation, it has also failed to account for any “hypothetical” variation as well.  
20

21                   **c.       The Applicant’s predictions are unreliable because they fail to**  
22                   **account for several significant factors.**

23           The Applicant’s predictions cannot be relied on. Not only did the Applicant fail to  
24 survey peak periods of use, it blindly compared its Whistling Ridge surveys with other surveys  
25 performed in different locations, different years, and documenting different species. This raises  
26 a simple question: how do those other studies inform what will happen at Whistling Ridge?  
27 Without correcting for these variables, it is impossible to know.  
28

1 First, the Applicant relied on two wildly different sets of data points. *See* Ex. 22.00 at 4  
2 (Figure 1). Two of those, showing extremely high fatality and use rates, are from facilities near  
3 each other in California. *Id.* at 5:2-4. The others represent a number of facilities mostly in the  
4 Northwest, showing very low use and mortality. *Id.* This is especially problematic because use  
5 fluctuates dramatically between both locations and years. Ex. 22.00 at 6:4-9. The Applicant  
6 based its predictions on studies performed in completely different habitats as well as in  
7 unusually extreme years. *Id.* Thus, without correcting for those variables, *no* prediction based  
8 on that data can be relied upon. *Id.* at 5:8-15

9  
10  
11 Similarly, the Applicant predicted avian mortality at Whistling Ridge by comparing  
12 observed bird use at that location to all observed bird use at other wind projects, irrespective of  
13 species. Jan. 6, 2011 Tr. at 708:1–13. As Dr. Smallwood observes, this simply does not make  
14 sense, because some species are more likely to go unobserved than others:

15  
16 [D]etection rates of birds decline rapidly with distance from the observer, more  
17 so for smaller-bodies birds, so comparing use rates between wind farms will be  
18 substantially biased when the maximum survey distance was 800 meters in one  
19 wind farm and only 400 meters in another, or when few birds of one species will  
be detected beyond 300m whereas most birds of another species will be  
detectable to 800m.

20 Ex. 22.00 at 30:5–9. In other words, it is harder to see some birds than others, especially at a  
21 distance. This should be obvious, especially with respect to size. However, without accounting  
22 for the fact that different species likely dominate different locations, it is impossible to tell  
23 whether the Applicant’s results reveal relative abundance of all birds, or merely relative  
24 abundance of birds that are roughly the same size. Ex. 22.00 at 12:1-2. The Applicant’s flawed  
25 approach simply does not help quantify impacts in terms of “numbers of individuals affected,  
26 threatened, or removed.” WAC 463-60-332(2). And it does not help quantify impacts to species  
27  
28

1 of special importance or priority. WAC 463-60-332(2)(e).

2 The methods used by the Applicant's consultants have generated inaccurate predictions  
3 at virtually *every* wind facility in the Northwest. Ex. 22.00 at 3:3–16, 22.05 at 4:18–23, 22.03 at  
4 3–4. Often, those predictions have been *very* wrong, representing gross failures within the field  
5 of wildlife biology. Ex. 22.00 at 3:3–7. Yet, in reviewing 76 wind projects, the Applicant's  
6 witness, Mr. Johnson, has *never* recommended that a project should not be built. Jan. 6, 2011  
7 Tr. at 733:23–25. This history should give the Council serious pause, both in its assessment of  
8 the Applicant's conclusions, and in its ultimate task to decide whether this facility is *needed* at  
9 this particular location, at this particular time.

10 The Applicant must complete at least one year of surveys, must survey peak seasonal  
11 use, and must correct for the confounding variables discussed above.

12 **d. The Applicant has not provided enough information to make an**  
13 **“informed decision” in this matter.**

14 Ironically, the Applicant defends its methods, yet at the same time, tries to *capitalize* on  
15 the very uncertainties they generate. In particular, the Applicant argues its facility should be  
16 permitted in a forested habitat about which little is known and which includes several sensitive  
17 species, specifically so the wind industry can make “informed decisions” in the future. Jan. 6,  
18 2011 Tr. at 650:7-9. The Applicant in essence asks for permission to use this Project as a test  
19 case.

20 Despite its unprecedented nature, the Applicant rejects every suggestion that the  
21 Council may require more information to make an “informed decision” in this matter. The  
22 Council must determine whether the proposed facility will provide a “net benefit” at this  
23 particular site, considering the need for power and the expected environmental impacts. Order  
24  
25  
26  
27  
28

1 No. 843 at 23 (Nov. 16, 2009). Yet the Applicant offers Whistling Ridge as an “optimal” place  
2 to gather this new information, without arguing it is “any better than any other” managed  
3 forestland to conduct its scientific experiment. Jan. 6, 2011 Tr. at 648:10–11, 650:10. This  
4 ignores an important question: is it a *worse* site?  
5

6 Instead of answering *that* question, the Applicant relies on a series of generalities and  
7 strawmen arguments to advocate for immediate permitting of the WREP facility without further  
8 study, despite the increased risks associated with operating wind farms in forested habitats.  
9

10 First, the Applicant asserts the facility will have low wildlife impacts, simply because in  
11 general, “[e]ven-aged, managed forests” such as the proposed WREP location “are sometimes  
12 referred to as ‘green deserts’ due to their lack of wildlife diversity and abundance.” Ex. 6.04r at  
13 26:2-3. However, the Applicant makes no attempt to actually assess to what degree, *or even if*,  
14 Whistling Ridge actually is a green desert and devoid of species diversity. *See id.* at 25:22 –  
15 26:25. Instead, as Dr. Smallwood has pointed out, during its 87-hour survey, the Applicant  
16 detected three times the avian species as were detected in nearly a thousand hours in the  
17 Altamont Pass, where wind projects have been extremely hazardous to birds. Ex. 22.00 at  
18 23:18–21. In response, Mr. Johnson provides only relative generalities based on a comparison  
19 that no party has suggested. Jan. 6, 2011 Tr. at 648:3–4 (“I would guess if we had data for an  
20 *unmanaged* natural forest that the diversity would be even higher.”) (emphasis added); *id.* at  
21 707:1–13.  
22  
23

24 Not only does the Applicant ignore the relevant issue, it has failed to comply with the  
25 *very first step* for assessing impacts under the WDFW’s Wind Power Guidelines. That step,  
26 entitled “Information Review,” provides as follows:  
27  
28

1 Existing information on species and potential habitats in the vicinity of the  
2 project area should be reviewed and if appropriate, mapped. Sources of existing  
3 information should include resource agencies, local experts, recognized  
4 databases (e.g., Priority Habitats and Species [PHS] database, Wildlife Program  
5 Wildlife Resources Data System [WRDS]), and data gathered at other nearby  
6 wind facilities or other types of projects.

7 Ex. 6.09r at 3. At the adjudication, Mr. Johnson admitted his firm did not request data on the  
8 local abundance of these species, specifically from the U.S. Forest Service or the Department  
9 of Natural Resources, the landowner immediately to the north. Instead, he merely “assumed”  
10 no data was available. Jan. 6, 2011 Tr. at 702:7-8. This failure to even ask for information  
11 disregards the very purpose of WDFW’s Wind Power Guidelines: to provide the “*best possible*”  
12 *information*” for “project proponents, permitting authorities and other stakeholders.” *Id.* at 2  
13 (emphasis added). In turn, Mr. Johnson even attempts to hide behind his failure to inquire,  
14 arguing the Applicant has relied on the only available source of information: other wind  
15 facilities in entirely different habitats.<sup>19</sup> *Id.* at 655:5-9. Yet, at the hearing, Mr. Johnson had no  
16 knowledge of the studies performed at the only other three wind farms proposed for Northwest  
17 forests—Radar Ridge and Coyote Crest in Washington, and Middle Mountain in Oregon. Jan.  
18 6, 2011 Tr. at 673:11–18.

19 Unless the Council obtains more information on species and potential habitats in the  
20 vicinity of the Project, it is impossible to conclude that the Applicant has fully analyzed  
21 “species communities adjacent to the project site.” WAC 463-60-332(2)(c). For example, when  
22  
23

---

24  
25 <sup>19</sup> This is also Mr. Johnson’s primary support for his cumulative impacts analysis (*see* Jan. 6,  
26 2011 Tr. at 653:21-22), despite serious problems with the underlying data (*See* Ex. 22.00 at 27:4-15).  
27 And he is willing to make similarly sweeping conclusions with respect to bat impacts, despite very little  
28 data. *See* Ex. 6.04r at 27:7-13 (stating, with respect to a single study at a single location, “*we now know*  
that turbines are not a strong natural attractant to bats.”) (emphasis added).

1 asked whether the surrounding area might contain comparatively high or low populations of  
2 several special status species (such as olive-sided flycatchers, Vaux’s swifts, western bluebirds,  
3 or pileated woodpeckers), Mr. Johnson responded, “I don’t know.” Jan. 6, 2011 Tr. at 708:13.  
4  
5 When asked if species inhabiting more intact forest near the Project site might frequent the  
6 Project site, he responded only that “*some* species” would not. *Id.* at 649:15–16 (emphasis  
7 added). In fact, Mr. Johnson had no knowledge of the quality of habitat on DNR land  
8 immediately to the north of the Project site. *Id.* at 649:8–11.  
9

10 Without asking for more information, the Applicant has disregarded every suggestion  
11 that habitat *type* at or near Whistling Ridge may be a factor that affects mortality. *See, e.g.,* Ex.  
12 6.04r at 35:1–4. For example, the Applicant ignored the recent Klickitat County Energy  
13 Overlay Zone FEIS, which repeatedly warns against siting energy facilities in forested habitats.  
14 *See* Ex. 22.02. Instead of considering the information in this document, Mr. Johnson argues,  
15 “[i]t is inappropriate to take conclusions from Klickitat County regarding development in  
16 forested areas where forested areas are very rare, and apply them to an area that is entirely  
17 forested.” Ex. 6.04r at 36:17–19. Yet, he ignores the fact that the FEIS specifically notes “large  
18 concentrations of forested habitat” indicate higher mortality because those areas “tend to be  
19 more complex, have higher biodiversity, and lack ideal siting conditions for energy  
20 development.” Ex. 22.02 at G-18.  
21

22 The conclusions in Klickitat County’s EIS have nothing to do with the relative  
23 abundance of forest in that county. Instead, they speak to the relative abundance of species  
24 within forested habitats. Mr. Johnson failed to recognize the difference. Moreover, at the  
25

26  
27 ///  
28

1 hearing, Mr. Johnson was not even aware that the proposed Project would *itself* border a  
2 heavily forested area in Klickitat County. Jan. 6, 2011 Tr.at 650:10-13.

3  
4 In short, the Council should reject the Applicant’s arguments that the proposed Project  
5 should be permitted simply because it might enable informed decisions in the future. Instead,  
6 the Applicant needs to provide the Council with the best possible information to make an  
7 informed decision in this matter.

8  
9 **e. The Applicant has not demonstrated that impacts to the endangered  
10 northern spotted owl have been adequately considered and  
11 addressed.**

11 The proposed facility is located within the White Salmon Spotted Owl Special  
12 Emphasis Area (“SOSEA”), created in 1996 to provide support for the Northern Spotted Owl.  
13 WAC 222-16-086(10). This species is listed as threatened under the federal Endangered  
14 Species Act of 1973, 16 U.S.C. §§ 1531–1544. The proposed Project site is also located near  
15 two historic spotted owl activity centers, which were known to contain spotted owls in 2000  
16 and 2002 respectively. Amended Application at 3.4-16. In the SOSEA “any ‘suitable spotted  
17 owl habitat should be maintained.’” DEIS at 3-56, citing 222-10-041(1).  
18

19  
20 On May 6, 2010 the Applicant’s consultant detected a spotted owl in one of those  
21 previously unoccupied activity centers, less than three miles from the Project site. Ex. 5.00 at  
22 6–10. This is consistent with Dr. Smallwood’s statement that activity centers tend to shift every  
23 generation or so. Ex. 22.00 at 24:14–15. In the case of spotted owls, this can be expected to  
24 occur about every six to eight years. *Id.* at 24:15–17.  
25

26 ///

27 ///

1           Thereafter, BPA began informal consultation with the U.S. Fish and Wildlife Service  
2 (“FWS”) to determine whether the Project might adversely affect the owl. That resulted in a  
3 FWS determination that the project was not likely to adversely affect the owl. Ex. 5.04 at 4.

4  
5           As emerged on cross-examination, the FWS letter contains mistakes and omits  
6 significant facts. FWS reports the owl in the wrong activity center. Jan. 6, 2011 Tr. at 783:5  
7 (*compare* Ex. 5.00 at 8:8 to Ex. 5.04 at 3). Yet, if available habitat falls below 40% in one of  
8 those centers, there is “a likelihood of ‘take’ under section 9 of the ESA.” Ex. 5.04 at 2. FWS  
9 reported the wrong distance from the project to the owl. Jan. 6, 2011 Tr. at 783:6–7. FWS states  
10 the project “does not contain suitable spotted owl habitat” (Ex. 5.04 at 3), even though the  
11 Applicant’s Jeff Reams admits it contains dispersal habitat (Jan. 6, 2011 Tr. at 783:13–14). And  
12 Mr. Reams documented the owl nine times, twice within 1.8 miles of the project. *See* Ex. 5.07.  
13 Yet FWS reports only three sightings, not including the sightings within 1.8 miles. Ex. 5.04 at  
14 3.<sup>20</sup>

15  
16  
17           This creates serious questions that must be answered before the Council decides  
18 whether this facility is needed at this location. For example, asked if an owl can travel two  
19 miles or more in a day, Mr. Reams answered “Yeah, it is common.” Jan. 6, 2011 Tr. at 765:25.  
20 Asked if it might travel to the project site, he answered “I don’t now, I really don’t.” *Id.* at  
21 766:12–13. Asked if noise from the facility might interfere with the owl’s ability to hunt, he  
22 responded, “I don’t know the answer to that question.” *Id.* at 789:17. And asked if he had any  
23 suggestions for how to answer these questions, he answered, “[u]nfortunately not.” *Id.* at  
24 789:20.  
25  
26

27  
28           <sup>20</sup> Mr. Reams admitted FWS was not “privy” to all his information. Jan. 6, 2011 Tr. at 784:5–7.

1 Like Mr. Johnson, Mr. Reams also did not have a firm grasp on relevant information  
2 that may have been provided to the Applicant by DNR. Earlier, DNR informed EFSEC that this  
3 project “may interfere with a spotted owl’s ability to disperse from the DNR HCP conservation  
4 area to other areas in the vicinity.” Ex. 1.16c at 3. Asked about that area, Mr. Reams responded  
5 he did not know where it was. Jan 6. 2011 Tr. at 791:12-14. Like Klickitat County, the  
6 conservation area lies directly to the north, in the areas he surveyed. *Id.* at 789:15. He also  
7 could not provide an opinion on whether a wind project would be worse for wildlife than a  
8 commercial forest. *Id.* at 792:10–13.

9  
10  
11 The Council should not approve this project until the Applicant answers these troubling  
12 questions by providing the Council with a detailed explanation of these indirect effects. WAC  
13 463-60-332(2)(c), (e). The Applicant should also provide a description of alternative turbine  
14 configurations, especially for the turbines located within the designated SOSEA and closest to  
15 the observed owl, in order to best protect spotted owls and their habitat. WAC 463-60-296. As  
16 with avian mortality, the Applicant must provide the Council with the “best possible  
17 information” before it makes its decision. Ex. 6.09r at 2.

18  
19  
20 **2. The Applicant must provide a detailed discussion of whether its proposed**  
21 **wildlife mitigation parcel would meet the Council’s standards, and the public**  
22 **and the parties must be given an opportunity to review and testify on the**  
23 **adequacy of the proposal.**

24 The Council’s rules require the Application to provide a “detailed discussion of  
25 mitigation measures, including . . . mitigation through compensation or preservation and  
26 restoration of existing habitats and species, proposed to compensate for the impacts that have  
27 been identified.” WAC 463-60-332(3). “The mitigation plan shall,” among other requirements,  
28 “[d]emonstrate how the mitigation measures will achieve equivalent or greater habitat quality,

1 value and function for those habitats being impacted,” and shall “[i]dentify and quantify the  
2 level of compensation for impacts to, or losses of, existing species due to project impacts.”  
3 WAC 463-60-332(3)(d), (e).  
4

5 The Application fails to provide a single word addressing these standards, let alone the  
6 detailed discussion required by the rule. *See* Amended Application at § 3.4.3.3. In fact, the  
7 entire wildlife mitigation section is less than a page long. *Id.*

8 The Applicant waited until the rebuttal stage of testimony to announce its attempts to  
9 address these requirements.<sup>21</sup> Through Jason Spadaro’s rebuttal testimony, the Applicant now  
10 proposes to mitigate the impacts from its 1,100-acre facility by donating a 100-acre  
11 conservation easement to Klickitat County at a parcel located more than twelve miles to the  
12 east of the Project site. *See* Ex. 1.03r at Fig. 2.1-1.<sup>22</sup> The Applicant made no attempt to establish  
13 Mr. Spadaro’s credentials as a biologist who could speak to whether the proposed mitigation  
14 parcel satisfies the Council’s standards, and neither of the Applicant’s expert biologists had  
15 either visited the parcel nor was willing to speculate on its adequacy. *See* Jan. 6, 2011 Tr. at  
16 725:11–15 (Johnson), 774:9–11 (Reams).  
17  
18

19 The Applicant has failed to comply with the Council’s standards of showing *in the*  
20 *Application* how the proposed wildlife mitigation parcel would qualitatively and quantitatively  
21 comply with the Council’s standards for compensating for the Project’s impacts. Moreover,  
22  
23

---

24 <sup>21</sup> In fact, the issue of wildlife mitigation was not discussed in any of the Applicant’s prefiled  
25 direct testimony, despite the fact that the Applicant proposed the mitigation parcel to WDFW  
approximately six months prior to the hearing. Ex. 1.03r.

26 <sup>22</sup> The Applicant selected the proposed mitigation parcel prior to consulting WDFW. Ex. No.  
27 1.12c at 2. Nor does the Applicant offer evidence that it consulted EFSEC, contrary to the WDFW Wind  
28 Power Guidelines’ requirement that “[m]itigation packages should be negotiated in consultation with  
WDFW and the permitting authority.” Ex. 6.09c at 8.

1 because the Applicant announced its proposal for the first time via rebuttal testimony, the  
2 public and the parties have been completely deprived of an opportunity to review and critique  
3 the adequacy of the proposed parcel for compliance with the Council's standards.  
4

5 The proposed mitigation parcel is an attempted amendment to the Application, being  
6 made improperly through rebuttal testimony. Applications for site certification shall "reflect the  
7 best available current information and intentions of the applicant." WAC 463-60-116(1).  
8 Amendments to applications must be submitted thirty days prior to the adjudication. WAC 463-  
9 60-116(2). The thirty-day requirement helps prevent the very problem that is now occurring  
10 here: a complete shutting out of the other parties and the public of an opportunity to review and  
11 testify on the amendments as part of the adjudication.  
12

13 Friends and other parties, as well as the interested public, have been prejudiced by the  
14 Applicant's last-minute announcement of its proposal for wildlife mitigation. Although the  
15 Applicant has failed to address the Council's substantive criteria at its own peril, Friends  
16 respectfully requests that the Council provide the parties and the public an opportunity to  
17 review and provide testimony and/or comments on whether the proposed wildlife mitigation  
18 parcel complies with the Council's standards.  
19  
20

21 **3. The Applicant has not demonstrated that its proposed mitigation parcel**  
22 **would achieve "no net loss" of habitat function and value.**

23 The Applicant's proposal to donate a wildlife mitigation parcel to Klickitat County must  
24 be evaluated against the Council's standard to achieve "no net loss of habitat functions and  
25 values by maintaining the functions and values of fish and wildlife habitat in the areas impacted  
26 by energy development." WAC 463-62-040. In addition, "[t]he ratios of replacement habitat to  
27 impacted habitat shall be greater than 1:1 to compensate for temporal losses, uncertainty of  
28

1 performance, and differences in functions and values.” WAC 463-62-040(d). The Applicant has  
2 not carried its burden to meet these standards.

3 First, the Applicant argues that its mitigation parcel will provide replacement habitat in  
4 the “same geographical region as the Project site.” Ex. 6.09c at 10. This ignores the Council’s  
5 standard, which is to preserve functions and values “*in the areas impacted by energy*  
6 *development.*” WAC 463-62-040 (emphasis added). The Applicant is more than capable of  
7 providing suitable mitigation habitat at or near the Project site. Ex. 1.13c at 2 (The proposed  
8 parcel “seems pretty useless to [the Applicant] considering the location,” and “[t]hey have lots  
9 of prime habitat closer to . . . the project site.”). At more than twelve miles away and in a  
10 different ecosystem, the parcel will likely not preserve any important functions and values lost  
11 at Whistling Ridge.  
12  
13

14 Second, there is no evidence the proposed parcel will provide habitat for the same  
15 species impacted by the facility. The Whistling Ridge site provides habitat for several special  
16 status species, including the northern spotted owl. Amended Application at 3.4-16; Jan. 6, 2011  
17 Tr. at 775:10-12. Yet, the mitigation parcel has been identified primarily for its value as  
18 western gray squirrel habitat (Ex. No. 1.13c at 2), and WDFW biologists expressed doubt that  
19 the site would provide valuable habitat even for that species (Ex. 6.09c at 9; CES at 181; Ex.  
20 1.13c at 2 (“The property is identified for its western gray squirrel values, but has little nesting  
21 habitat as the area is mostly oak.”)).  
22  
23

24 Third, the mitigation parcel does not comply with the Council’s standard for like-kind  
25 replacement. For example, while the project site contains managed coniferous forest, the  
26  
27  
28

1 mitigation parcel is primarily oak woodland. Ex. 1.01r at 5:5–8.<sup>23</sup> During its 2004 rulemaking,  
2 the Council specifically explained that its no net loss standard refers to habitat type: “The  
3 intent” of that rule “is to require replacement habitat of an equal quality, type, and size.” CES at  
4 51; *Id.* at 181 (response to comments 5, 7, and 8). An Applicant may not exchange one type for  
5 another.  
6

7 Last, the Applicant proposes a replacement ratio based only on the “converted” lands  
8 associated with the proposed facility, a term defined not by the Council’s statutes and rules, but  
9 by Washington’s Forest Practices Act. Ex. 1.01r at 3:13; *see also* RCW 76.09.020(8). As a  
10 result of the Applicant’s reading of that term, it has identified only 56 acres of the 1,152-acre  
11 Project as triggering the need for mitigation. Ex. 1.01r at 3:12. This 56 acres consists of the  
12 land proposed for the substation, roads, and a 50-foot area around each turbine that would be  
13 permanently cleared. Jan. 3, 2011 Tr. at 140:22-25.  
14  
15

16 The Applicant’s approach does not address the full loss of function and value taken by  
17 the proposed development. While the proposed mitigation parcel is a small compact area, *see*  
18 Ex. 1.03r at fig. 2.1-1, the WREP facility would be a scattered wall of turbines, creating a  
19 permanently fragmented landscape over more than a thousand acres. The Applicant fails to  
20 acknowledge that the space in between the turbine corridors would be adversely affected,  
21 resulting in a much larger impact than is represented by the Applicant’s figure of 56 acres.  
22

23 In addition, “[t]he presence of wind turbines may alter the landscape so that wildlife  
24 habitat use patterns are altered, thereby displacing wildlife away from the project facilities.”

25 Amended Application at App. B-6 p. 7; *see also* Ex. 22.00 at 25:19 – 26:6 (displacement away  
26

---

27 <sup>23</sup> WDFW also noted that the proposed mitigation parcel faces little threat of being logged or  
28 developed if not donated for mitigation purposes. Ex. 1.12c at 2.

1 from turbines represents “reductions of habitat suitability, and ultimately habitat loss for these  
2 species.”). Such displacement does not merely affect flight, but also terrestrial behaviors such  
3 as nesting. *Id.* Displacement can affect raptors, woodpeckers, and passerines (all documented at  
4 Whistling Ridge), and has been documented out to 100 and 200 meters from wind projects. *Id.*  
5 at 8; Ex. 6.04r at 29:9-10. Accounting for acreage lost by displacement would require a much  
6 larger mitigation parcel.  
7

8           Furthermore, the proposed replacement ratio fails to account for the actual acreage of  
9 lost function and value. Beyond the 50-foot radius of cleared land surrounding each turbine, the  
10 Applicant also proposes to keep an additional zone of trees (extending 100 feet in each  
11 direction) in a permanently immature state, capped at 15 feet in height. Amended Application  
12 at 2.3-9, fig. 2.3-4. Those two zones amount to an area nearly 10 times greater than what is  
13 currently proposed for replacement. The Applicant also proposes a third zone (extending up to  
14 500 feet from the turbines) where trees would be capped at 50 feet, depending on the elevation  
15 and prevailing wind. Amended Application at 2.3-9, fig. 2.3-4. Much of the area in these three  
16 zones is currently on a 50-year harvest cycle, but under the Applicant’s proposal would be  
17 changed to a much shorter cycle, permanently eliminating habitat provided by older trees.  
18 Amended Application at 2.3-9. The Applicant has made no showing that this new, stunted area  
19 would continue to provide the same functions and values under this shorter cycle.  
20  
21

22           The Applicant’s mitigation parcel does not compensate for lost habitat function and  
23 value at the Project site. It is located more than twelve miles away and in a different county. It  
24 contains an entirely different habitat type. And it does not compensate for the fractured and  
25

26 ///  
27  
28

1 altered landscape that it will create, neither in size nor function. The proposed mitigation parcel  
2 cannot be used to justify this Project.

3 **E. Cultural resources must be protected.**

4 While the Yakama Nation has withdrawn its witnesses, testimony, and exhibits, the  
5 Council still has an obligation to ensure that cultural resources would not be harmed by the  
6 Project. WAC 463-47-110(1)(a)(iv). The Council's prior order stating that Council staff would  
7 be engaging in direct consultation with the Yakama Nation has not been withdrawn. Council  
8 Order 850 (Prehearing Order No. 6) (Aug. 11, 2010). Presumably the BPA will also be  
9 completing its responsibility to conduct government-to-government consultations with the  
10 Yakama Nation pursuant to Section 106 of the National Historic Preservation Act. 16 U.S.C. §  
11 470f; *see also* 40 C.F.R. § 1502.25(a). This multi-government consultation process may result  
12 in requirements to redesign the Project to avoid impacts to sensitive cultural resources that have  
13 not been presented during the adjudicatory process. *See* Yakama Nation Objection to Council  
14 Order No. 848 (Prehearing Order No. 4) at 4 (July 9, 2010). The Council must take into  
15 account any avoidance and mitigation measures needed to protect cultural resources.  
16  
17  
18  
19

20 **V. CONCLUSION**

21 Based on the foregoing, the Council should recommend denial of the proposed Project.

22 Dated this 18th day of March, 2011.

23 REEVES, KAHN, HENNESSY & ELKINS

FRIENDS OF THE COLUMBIA GORGE, INC.

24 /s/ Gary K. Kahn

/s/ Nathan J. Baker

25 Gary K. Kahn, WSBA No. 17928

Nathan J. Baker, WSBA No. 35195

26 Attorney for Intervenor Friends

Staff Attorney for Intervenor Friends

27 (503) 777-5473

(503) 241-3762 x101

gkahn@rke-law.com

nathan@gorgefriends.org