

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
ADJUDICATION RESPONSE BRIEF

ORAL ARGUMENT REQUESTED

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1 **I. Introduction**

2 The Applicant for the proposed Whistling Ridge Energy Project (“WREP” or “Project”)
3 has failed to meet its burden of demonstrating that the Project would avoid and minimize impacts
4 to the environment, further the public interest, and supply abundant energy to the people of
5 Washington State. In addition, the evidence in the record shows that the Project would cause
6 unacceptable impacts to nationally significant resources and local community interests, even
7 while providing little to no public benefit. The Application for site certification should be denied.
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10 As Friends and others have explained, the Application is replete with errors,
11 inconsistencies, and omissions that must be corrected to enable the Council and the Governor to
12 make an informed decision. In an attempt to sidestep these problems, the Applicant now
13 emphasizes quantity over quality. For example, the Applicant focuses on the number of pages of
14 its testimony and the number of viewpoints chosen by the Applicant for scenic modeling. *See,*
15 *e.g.,* App. Op. Br. at 23, 34. However, quantity does not equate to quality. The Applicant’s
16 analysis is woefully inadequate and does not meet its burden to provide a true understanding of
17 the proposed Project, its impacts, and the possible alternatives.
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20 The Applicant also inappropriately attempts to shift its burden to other parties. Rather than
21 taking the opportunity to demonstrate that the proposed Project would be in the public interest
22 and would fully comply with the applicable laws, the Applicant spends the majority of its
23 opening brief attacking Friends and SOSA and their witnesses. Presumably, the Applicant makes
24 these attacks to distract the Council from thoroughly examining the Project’s serious problems
25 and the significant environmental harm it would cause. In evaluating all issues, the Council
26 should keep in mind that the burden lies with the Applicant.
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1 A fundamental problem with the Application remains: it does not provide the details of the
2 actual Project the Applicant desires to build. We still do not know how many turbines would be
3 built, nor the turbines' locations, size, weight, blade length, cost, and energy capacity. Nor do we
4 know the impacts of these turbines. Instead, the Applicant has only modeled and evaluated an
5 "overstated" project that "is never going to be built," and refuses to specify the actual details of
6 the planned Project. Jan. 4, 2011 Tr. at 57:16; Jan. 4, 2011 Tr. at 182:12–13.
7

8 The Applicant now asserts that its new, yet to be described proposal is designed to
9 "minimize aesthetic impacts," "improve the Project's visual coherence," and "further mitigat[e]
10 any likely aesthetic impacts." App. Op. Br. at 34.¹ Yet the Applicant offers no evidence to
11 demonstrate these assertions. Nor have any of the other parties been given an opportunity to
12 evaluate the Applicant's future proposal and present their own evidence and conclusions. As
13 Friends has explained, the Applicant's "hide the ball" approach is a direct violation of the
14 Council's rules. If the Application is not amended to address these problems, it must be denied.
15 See Friends Op. Br. at 6–12.
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18 The Applicant makes the somewhat confusing argument that any issue other than
19 "seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality" is a SEPA
20 issue, not an issue for the adjudication. App. Op. Br. at 1. This appears to be a belated attempt by
21 the Applicant to avoid responsibility on other issues (such as scenic resources, traffic and other
22 community impacts, socioeconomics, and energy production), even though the Application and
23 the Applicant's testimony attempt to address these issues. The Applicant's newfound position is
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27 ¹ Elsewhere, the Applicant has insinuated that the primary factor driving its future, yet to be
28 described layout will be economics, not environmental considerations. See Jan. 3, 2011 Tr. at 73–77 (oral
remarks and cross-examination of Jason Spadaro).

1 wrong. Pursuant to the Council’s comprehensive mandate and other authorities, these issues are
2 part of the adjudication. *See* Friends Op. Br. at 4–5. These issues are *also* SEPA issues. But that
3 does not mean the issues need not be addressed in the adjudication. Indeed, in a January 2009
4 pre-rulemaking notice, EFSEC acknowledged that such issues are adjudication issues and are
5 handled “on a case-by-case basis”:

7 Chapter 463-62 WAC does not address certain subjects that pertain to some
8 alternative energy resources. For wind power projects, EFSEC has needed to
9 develop criteria for turbine placement (setbacks from property lines, residential
10 building, and other structures); lighting; avian monitoring, and other issues on a
11 case-by-case basis. Other alternative energy resources such as wave and tidal,
12 solar, and geothermal may also have particular construction and operational issues
that could also be addressed by rules. Developing standards for some or all of
these subjects would help alleviate the case-by-case determinations by EFSEC.²

13 That pre-rulemaking inquiry has since been withdrawn.³ Thus, the Council continues to address
14 these and other issues on a case-by-case basis.

15 Because the Council reviews wind power applications on a case-by-case basis, it is
16 especially important to consider the many ways in which the proposed WREP is different from
17 all other wind energy projects this Council has reviewed to date. The WREP is the only project
18 proposed within a western Washington forested environment, where the potential for ecological
19 impacts is greater than in eastern Washington. This is the only project that would convert
20 forestland into industrial uses within an area specifically designated for protecting the imperiled
21 northern spotted owl. This is the only project proposed to be sited within world-renowned scenic
22 landscapes and immediately adjacent to a federally protected National Scenic Area. This is the
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26 ² EFSEC, Preproposal Statement of Inquiry, CR-101 (Jan. 14, 2009), available at
<http://www.efsec.wa.gov/Rulesreview/Alternative%20Energy%2009/CR%20101.pdf>.

27 ³ Withdrawal of CR 101, Letter from Allen J. Fiksdal, EFSEC Manager, to Kerry Radcliff, State
28 of Washington Code Reviser’s Office (Apr. 15, 2009), available at
<http://www.efsec.wa.gov/Rulesreview/Alternative%20Energy%2009/CR101%20withdrawal%20ltr.pdf>.

1 only project with federal agencies, including the U.S. Forest Service and the National Park
2 Service, recommending significant modifications. This is the only project proposed within three
3 miles of the Lewis and Clark National Historic Trail, the Oregon Pioneer National Historic Trail,
4 the Historic Columbia River Highway, and the Ice Age Floods National Geologic Trail. This is
5 the only project surrounded by recreational resources. This is the only project with a high
6 likelihood of adversely affecting cultural resources. And this is the only project that would cause
7 significant adverse impacts in two states: not just Washington, but Oregon as well.
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10 The Whistling Ridge proposal is also unique because of the small amount of energy it
11 would produce, compared to other wind energy projects reviewed by this Council. According to
12 the Applicant, the WREP's maximum energy capacity would be only 75 MW.⁴ And yet, the three
13 other wind projects previously reviewed by this Council and approved by the Governor have
14 averaged 187.9 MW in maximum capacity each—exactly two and a half times more than the
15 WREP.⁵ These already permitted projects cause less environmental harm, community impact,
16 and controversy than would the WREP, even while producing significantly more power than the
17 WREP ever would. The Council should consider these relative costs and benefits when
18 determining whether this Project at this location is appropriate and in the public interest.
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21 Further, the Applicant has made no effort to ensure that this proposed Project would
22 actually provide abundant energy to the citizens of Washington at reasonable cost. Instead, the
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25 ⁴ Amended Application at I-1; *see also* Jan. 3, 2011 Tr. at 73:7–10 (testimony of Jason Spadaro)
26 (“Seventy-five megawatts is the smallest wind energy project proposed in the state of Washington other
27 than the Community Wind Project on the Coast which has only a few turbines.”).

28 ⁵ According to information provided by EFSEC on its web site, three wind energy projects have
been reviewed by the agency and permitted to date: [Wild Horse](#) (273 MW), [Kittitas Valley](#) (100.8 MW),
and [Desert Claim](#) (190 MW).

1 small amount of power from this Project would be distributed to the highest bidder, and the
2 highest bidder is likely to be in California.

3 In conclusion, the Applicant fails to meet its burden of demonstrating that the Project
4 would avoid and minimize impacts to the environment, further the public interest, and supply
5 abundant energy to the people of Washington State. Moreover, the small amount of power that
6 would be produced by this Project does not justify allowing the Applicant to irreparably harm the
7 Columbia River Gorge and its national heritage, imperiled wildlife species, rural communities,
8 and tourism-dependent economy—especially when the State of Washington already has
9 sufficient wind energy supply to meet its renewable energy needs. Because the tremendous
10 adverse impacts of the Project greatly outweigh its minimal benefits, the Project is not in the
11 public interest and should be denied.⁶

12 II. Response

13 A. The Applicant fails to meet its burden of demonstrating that the proposed Project 14 would avoid and minimize impacts to scenic, recreational, and community resources.

15 The Applicant has the burden of demonstrating that the proposed Project would avoid and
16 minimize impacts to scenic, recreational, and community resources. Given the numerous errors,
17 omissions, and inconsistencies in the Application's submissions, the Applicant has not met its
18 burden. Moreover, the record overwhelmingly shows that the WREP would cause unacceptable
19 adverse impacts to scenic, recreational, and community resources, even with fewer turbines. For
20 these reasons, the Project should be denied.

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26 ⁶ In this brief, Friends will adopt issues raised by other parties. Friends makes these adoptions in
27 an abundance of caution to ensure preservation of issues in the event of an appeal. *See Gold Star Resorts,*
28 *Inc. v. Futurewise*, 140 Wn. App. 378, 395–96, 166 P.3d 748 (2007) (party in an administrative
proceeding that adopted issues raised by another party could pursue those issues on appeal).

1 **1. The Applicant ignores the Council’s legal authorities requiring the**
2 **protection of scenic, recreational, and community resources.**

3 Friends has listed several of the Council’s authorities requiring the protection of scenic,
4 recreational, and community resources. Friends Op. Br. at 4–5, 13–14. The Applicant ignores
5 these authorities, and instead refers to its burden as “informational” in nature only. App. Op. Br.
6 at 23. The Applicant is wrong. The Applicant has the burden to demonstrate that its proposed
7 Project would avoid adverse impacts to scenic, recreational, community, and other resources.
8 The Applicant’s burden arises both under SEPA *and* the Council’s other authorities detailed in
9 Friends’ Opening Brief. The Council should reject the Applicant’s characterization of the
10 adjudicative process as “informational” only.
11

12 **2. The Scenic Area Act does not limit the Council’s authority under state law to**
13 **prevent adverse impacts to the scenic resources of the Columbia River**
14 **Gorge.**

15 The Applicant makes the specious argument that the Columbia River Gorge National
16 Scenic Area Act prohibits the Council from protecting the scenic resources of the Columbia
17 River Gorge. App. Op. Br. at 27–32; *see also* Cty Op. Br. at 5–8. The Applicant relies on the
18 following savings provision in the Scenic Area Act:
19

20 Nothing in [this Act] shall . . . establish protective perimeters or buffer zones
21 around the scenic area or each special management area. The fact that activities or
22 uses inconsistent with the management directives for the scenic area or special
23 management areas can be seen or heard from these areas shall not, of itself,
preclude such activities or uses up to the boundaries of the scenic area or special
management areas.

24 16 U.S.C. § 544o(a)(10).

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1 This provision does not mention other laws, and does not limit the Council's authority to
2 protect the scenic, recreational, and community resources of the Columbia River Gorge. As
3 explained by the Counsel for the Environment,
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5 [w]hile the CRGNSA's exclusion language limits the scope of that Act, it does
6 not negate the State's interest in either avoiding or mitigating negative impacts the
7 project will have upon a view shed that is recognized as an aesthetic and historic
8 treasure.

9 Counsel for the Env't Br. at 17:2-4. In other words, this Council has the authority and
10 responsibility under state law to protect scenic resources, such as the outstanding views of the
11 Columbia River Gorge, regardless of the federal Scenic Area designation.

12 Under the Applicant's interpretation, the Council's authority would be preempted by the
13 Scenic Area Act. The Act has no such preemptive effect, neither express nor implied.⁷ The
14 Applicant's unprecedented interpretation would effectively preempt and nullify existing state and
15 county laws that provide additional protections for Gorge resources. *See, e.g.*, Ex. 25.00 at 3:7-
16 15 (listing several such state and county laws).

17
18 The Applicant primarily relies on *Northwest Motorcycle Association v. United States*
19 *Department of Agriculture*, 18 F.3d 1468 (9th Cir. 1994). In that case, the Ninth Circuit upheld
20 the U.S. Forest Service's decision to prohibit motorcycle use outside of a federally designated
21 wilderness area. Although *Northwest Motorcycle* involved a federal agency and does not directly
22 apply to this Council, it nevertheless is instructive by analogy, and it actually undermines, rather
23 than supports, the Applicant's position.
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27 ⁷ *See, e.g., Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947) (requiring "clear and manifest
28 purpose" for federal law to preempt state police powers); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486
(1996) (explaining that Congress does not cavalierly preempt a state's sovereign powers based on
principles of implied preemption).

1 In *Northwest Motorcycle*, the Ninth Circuit concluded that impacts to a wilderness area
2 could be “a factor” in prohibiting activities outside the wilderness area. *Id.* at 1480–81. The
3 Court applied the following provision in the federal Washington State Wilderness Act:

4
5 Congress does not intend that designation of wilderness areas in the State of
6 Washington lead to the creation of protective perimeters or buffer zones around
7 each wilderness area. The fact that non-wilderness activities or uses can be seen
8 or heard from areas within the wilderness shall not, *of itself*, preclude such
9 activities or uses up to the boundary of the wilderness area.

10 Washington State Wilderness Act of 1984, Pub. L. No. 98-339, § 9, 98 Stat. 299, 305 (emphasis
11 added). The Court explained the effect of this language:

12 When Congress used the words “of itself,” it implicitly stated that the effects on a
13 Wilderness area can be considered when allocating uses of adjoining
14 nonwilderness area, so long as it is not the only reason.

15 18 F.3d at 1481.

16 The operative language in the Scenic Area Act’s savings provision (“of itself”) is identical
17 to that in the Washington Wilderness Act. *See* 16 U.S.C. § 544o(a)(10). Thus, impacts to the
18 Scenic Area caused by the WREP can and should be a factor in the Council’s decision, just as
19 the impacts to the wilderness area in the *Northwest Motorcycle* case were a factor.

20 The Applicant largely ignores the key operative language in the two statutes, and instead
21 exaggerates a trivial difference. App. Op. Br. at 30:4–21. The Scenic Area Act’s provision
22 begins with the phrase “Nothing in [this Act] shall.” 16 U.S.C. § 544o(a)(10). The Washington
23 Wilderness Act’s provision begins with the phrase “Congress does not intend.” Pub. L. No. 98-
24 339, § 9, 98 Stat. at 305. The language in both statutes, although worded differently, has the
25 same ultimate meaning and effect. If anything, the Scenic Area Act is more narrow and clear,
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1 because it expressly refers to *nothing in the Act* establishing a perimeter or buffer zone around
2 the Scenic Area, while leaving other federal and state laws completely unaffected.

3 In passing the Scenic Area Act, Congress did not intend to preempt or nullify state
4 authority to protect scenic resources located outside of, but immediately adjacent to, the Scenic
5 Area. The Council should reject the Applicant's arguments.

7 **3. The Applicant used an unverified methodology created by an unqualified**
8 **consultant to measure scenic impacts, even though more appropriate, time-**
9 **tested methods are available.**

10 **a. The Applicant's methodology was created specifically for the WREP**
11 **by a consultant who was unqualified to do the work.**

12 The Applicant incorrectly argues that the Council has previously approved of the
13 Applicant's scenic impacts assessment methodology for use in reviewing other wind energy
14 facilities. App. Op. Br. at 24:4–7.⁸ But the Applicant's witness Dautis Pearson has admitted that
15 he modified his methodology specifically for the WREP, meaning it has never been used for
16 another wind facility. *See* Friends Op. Br. at 26–27. Because this hybrid methodology was not
17 created by a qualified expert, has not been approved by an agency with special expertise in
18 scenic resource management, has not been peer reviewed, and has generated conclusions that are
19 completely at odds with those of expert agencies, it cannot be relied upon.

21 Even if the Applicant's methodology *had* been used before, the Council is not bound by
22 prior case-by-case project reviews, and it certainly would not be appropriate to continue a
23 practice once its flaws become evident. This is particularly a concern when the applicants'
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26 ⁸ In fact, it appears that the Desert Claim FEIS (which was submitted as part of the Desert Claim
27 Application) relies *exclusively* on the FHWA manual, without introducing many of the created elements
28 as a factor in the viewer sensitivity analysis).

1 consultants continue to tweak the measuring stick for each project, without ever subjecting their
2 closed door decisions to transparency and peer review.

3 The Applicant concedes that it failed to employ a qualified landscape architect during any
4 stage of its scenic impacts analysis. App. Op. Br. at 24–25. Ironically, there was a methodology
5 available for use by non-landscape architects. The BLM’s Visual Management System was
6 specifically designed to accommodate use by non-landscape architects by providing a step-by-
7 step process for planners to work within. Exs. 8.11c, 8.12c at 1; Jan. 4, 2011 Tr. at 288:9–22.
8 Rather than using this system, Mr. Pearson went beyond his qualifications to cobble together a
9 new, hybrid system that distorts the basic principles of scenic resource management and
10 generated unreliable conclusions. *See generally* Exs. 21.00 at 7:21–22; 21.02 at 2.

11 In the end, the remarkable degree of divergence between the Applicant’s analysis and the
12 unanimous positions of all other expert commentators is conclusive evidence that the Applicant’s
13 analysis is fundamentally flawed.

14 **b. The Forest Service system, BLM system, and Scenic Area materials**
15 **can and should be used to measure the scenic impacts of the Project.**

16 The Applicant incorrectly argues that the Forest Service system, the BLM system, and
17 Scenic Area materials cannot be used to evaluate the scenic impacts of a wind energy facility on
18 land outside the Scenic Area. App. Op. Br. at 24:18–22, 25–27. Not only *can* these systems be
19 used for assessing the impacts of this Project, they *should* be. These systems would provide the
20 Council with a consistent basis for measuring the Project’s impacts on landscapes that have
21 already been thoroughly inventoried.

22 In the present case, in order to protect the affected scenic resources, the Council must first
23 be able to assess and understand the scenic impacts of the Project using an objective method. The
24

1 Applicant has failed to provide an adequate assessment, in part because it failed to use contrast
2 ratings. *See generally* Ex. 21.00 at 12:14–17, 21.02 at 2. Contrast ratings are a vital tool because
3 they provide “an efficient and accurate way of understanding potential impacts to the views.” Ex.
4 21.00 at 11:2–3.

6 The BLM, Forest Service, and Scenic Area systems all rely on standardized contrast
7 ratings to measure scenic impacts. In addition, the Gorge has already been thoroughly mapped
8 under the Forest Service system. Ex. 21.06; Ex. 8.15c at I-1–I-2. The Council should reject the
9 Applicant’s attempts to deprive the Council of these practical tools for evaluating scenic impacts.

11 The Forest Service, BLM, and Scenic Area systems all use visual quality objectives
12 (“VQOs”), which serve two functions. First, VQOs provide a way to measure scenic impacts
13 using contrast ratings. These contrast ratings are “simple and time-tested, objective, analytical
14 standards.” Ex. 21.00 at 12:6–7. Second, VQOs can provide management objectives for scenic
15 landscapes.

17 The Applicant conflates these two functions in arguing that Scenic Area VQOs cannot be
18 used here, primarily because the Project site is outside the Scenic Area. App. Op. Br. at 25–27.
19 But Friends has suggested the use of VQOs here only for their first function: to *measure scenic*
20 *impacts*. Friends’ witness, landscape architect Dean Apostol, aptly explains the issue:

22 Note that measuring contrast does not involve having an assigned protection
23 objective. The Applicant makes the argument that it used the FHWA method
24 because visual quality management objectives have not been assigned to the
25 Whistling Ridge Area. But measuring visual contrast is useful in any case, and the
Applicant failed to do this.

26 Ex. 22.00 at 12:14–17; *see also* Ex. 24.02 at 2 (Forest Service requests contrast ratings).

1 The fact that the Project site is adjacent to the Scenic Area is a red herring. For example,
2 Mr. Apostol has explained that the BLM’s system has often been used to analyze impacts of
3 development on private land adjacent to federally managed land, including several wind energy
4 projects on private land in the Steens Mountain vicinity of Oregon, as well as the Windy Flats,
5 Windy Flats West, and Windy Point projects in Klickitat County. Ex. 21.00 at 7:16–17.

7 In addition to the Applicant’s failure to use any contrast ratings, it argues the Council
8 should use the FHWA manual, which was specifically designed for analyzing the impacts of
9 linear federal highway projects that move through different landscapes. App. Op. Br. at 24:16–
10 18. But wind facilities do not appear linear in many landscapes, particularly in mountainous
11 landscapes such as the Gorge. Instead, the WREP would actually appear as overlapping, chaotic
12 clusters from many viewing angles. *See* Ex. 21.00 at 5:11–12; 29:17–18.

14 The BLM and Forest Service systems are better suited for evaluating this Project. First,
15 they were designed to address wide varieties of development, including utilities. *See* Exs. 21.00
16 at 7–8, 8.11c, 8.12c, 8.14c. Second, the affected environment has already been inventoried using
17 the Forest Service system, thus allowing for a consistent analysis of this Project.

19 The Council should ensure that the proper tools are used to assess the Project’s scenic
20 impacts. The BLM, Forest Service, and/or Scenic Area systems would allow for a practical,
21 verifiable, and consistent scenic impacts analysis of the WREP based on uniform contrast
22 ratings, and should be used here.

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1 **4. The Applicant’s analysis and conclusions are riddled with errors and**
2 **inconsistencies.**

3 **a. The Applicant’s attempt to correlate its analysis with the Forest**
4 **Service’s scenic resource inventory maps is in error and is completely**
5 **undermined by the Applicant’s own witness.**

6 The Applicant argues that its scenic resource assessment is consistent with the Forest
7 Services’ scenic resource inventory maps. App. Op. Brief at 38–40. But the Applicant’s scenic
8 witness, Dautis Pearson, contradicts this argument.

9 The Applicant argues that Mr. Pearson submitted “uncontroverted” testimony that the
10 Applicant’s “viewer sensitivity” analysis in the Application depicts the same information as the
11 Forest Service’s “landscape sensitivity” map. App. Op. Br. at 39–40. However, on cross-
12 examination, Mr. Pearson contradicted this exact point by acknowledging that “landscape
13 sensitivity” is a completely different concept than “viewer sensitivity.” Jan. 4, 2011 Tr. at 331:2–
14 9; *see also* Friends Op. Br. at 29–30.

15 The Applicant also argues that the Applicant’s “Summary of Existing Scenic Quality
16 Assessment and Project Visual Impacts” depicts the same information as the Forest Service’s
17 Visual Absorption Capability Map for the Scenic Area. App. Op. Br. at 39–40.⁹ But even the
18 Applicant’s witness Mr. Pearson acknowledged that these two documents have absolutely no
19 relation to each other. *See* Jan. 4, 2011 Tr. at 331:2–5; 364–66.¹⁰ Thus, the Applicant claims that
20 its testimony is “uncontroverted” (App. Op. Br. at 40:2) are wrong and misleading.

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22 ⁹ The Applicant’s “Summary of Existing Scenic Quality Assessment and Project Visual Impacts”
23 is at Table 4.2-5 in the Amended Application. The Forest Service’s Visual Absorption Capability Map is
24 at page 6 of Exhibit 21.06. *See also* Ex. 8.15c at I-2 (description of this map).

25 ¹⁰ Visual absorption capability is an analysis of a landscape’s ability to absorb change through
26 new development without diminishing scenic quality. *See* Ex. 8.15c at I-1–I-2.

1 Finally, the Applicant incorrectly claims that its scenic quality ratings in the Application
2 are consistent with the Forest Service’s Landscape Significance Map. App. Op. Br. at 39:5–10.
3 The Applicant focuses on the fact that the Forest Service’s Landscape Significance Map depicts
4 “second or third order landscapes” immediately adjacent to the Project site. *Id.* The Applicant
5 completely misses the mark. The “third order” landscapes noted by the Applicant are screened
6 by topography and thus not visible from the important viewing areas from which they were
7 mapped.¹¹ The actual affected viewshed as seen from important public viewing areas are
8 “primary” and “second” order views, which are both highly significant, as explained by the
9 Forest Service in its comments. Ex. 21.06 at 5; 21.02 at 2. Once again, the substance of the
10 Applicant’s analysis is unquestionably wrong.

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13 **b. The viewer sensitivity analysis in the Application was based on wrong**
14 **distances, which substantially underestimated likely scenic impacts.**

15 The Applicant notes that increased distance from a viewpoint generally reduces contrast.
16 App. Op. Br. at 38:1–2. However, in preparing its viewer sensitivity ratings and analyzing the
17 Project’s impacts, the Applicant relied on erroneous distances, thereby underestimating contrast
18 and scenic impacts, for 10 of the 21 viewpoints.¹²

19
20 The errors are plain on the face of Exhibit 8.08r, which contains the Applicant’s visual
21 simulations. For example, the Applicant expressly states that it analyzed the impacts to the view
22

23 ¹¹ For example, the “landscape significance” map depicts a large third order area east of the
24 Project. Ex. 21.06 at 5. This area is on the north slope of Underwood Mountain. Amended Application at
25 figs. 2.1-1, 2.3-1. As viewed from important viewpoints from the southwest, south, and southeast, this
26 area would be completely screened by topography, thus explaining its identification as “third order”
27 significance. And because this area is screened, the Project site appears adjacent to first and second order
28 areas as viewed from these viewpoints, *not* third order areas. *See* Ex. 21:00 at 3:5–10, 22:16–19; Ex.
21.02 at 2; Ex. 9.04R at 1.

¹² These include Viewpoints 2, 3, 10, 12, 14, 15, 16, 20, 21, and 22. The true distances can be
verified by using the scaled map at Figure 4.2-5 of the Amended Application.

1 from Viento State Park by calculating its distance as “greater than 5 miles” from the viewpoint
2 and then analyzing the impacts based on that distance. Ex. 8.08r (Viewpoint 14).¹³ However,
3 elsewhere on the same document, the true distance is revealed: Viento State Park is *only four*
4 *miles* from the Project. This is a serious and fundamental error showing that the Applicant based
5 it scenic analysis on wrong information.¹⁴ The Applicant’s sloppy analysis undercuts its
6 credibility and highlights its misguided focus on quantity over quality.
7

8 **c. The Applicant failed to provide animations depicting the impacts of**
9 **blade movement and flashing lights on important views.**

10 The Applicant argues, based on testimony from its witness Tom Watson, that animations
11 are not necessary and would have overstated impacts because “most viewpoints are from
12 highways and roads located quite a distance from the Project site.” App. Op. Br. at 37–38. But
13 Mr. Watson testified that he had no formal training in visual impact assessment methodologies,¹⁵
14 whereas multiple *qualified* experts requested animations and expressed the need to consider the
15 impacts of moving blades and flashing lights.¹⁶ Based on the reliable testimony of qualified
16 experts, animations should be provided so that a complete analysis can be performed.
17

18 The Applicant’s argument that animations are unnecessary because views are “quite distant
19 from the Project” is a slap in the face to the citizens of Underwood and other nearby affected
20 communities, whom the Applicant completely ignores. Underwood in particular has static views
21
22

23
24 ¹³ See also Amended Application at 4.2-61 (providing the erroneous figure of “greater than 5
25 miles).

26 ¹⁴ Views within five miles of a viewpoint are a “critical area” where even conventional
27 development, such as houses or roads, can be particularly problematic. Ex. 8.13C at 116; see also Friends
28 Op. Br. at 29:12–24.

¹⁵ Jan. 4, 2011 Tr. at 224:9–17, 230:16–17

¹⁶ See, e.g., Ex. 21.00 at 6–7, 22:3–7, 28:17; Ex. 21.02 at 4; Ex. 21.04 at 2; Ex. 61.02 at 1–3; see
also Public Comment #351 at 369, 372 (National Academy of Sciences Report).

1 from residences,¹⁷ pedestrians, and local wineries within three miles of the Project. The
2 Applicant also ignores other important static views from within five miles of the Project,
3 including views from the City of White Salmon and the Columbia River.
4

5 Furthermore, the Applicant's argument that animations would not have value for static
6 views beyond five miles is unfounded. *See* App. Op. Br. at 38, n. 31. The Applicant's own
7 witness admitted that blade movement increases contrast and that, under proper viewing
8 conditions, movement of turbine blades can be visible fifteen miles from a wind facility. Jan. 4,
9 2011 Tr. at 240:17–22, 244:6–10; *see also* Ex. 21.00 at 5:1–3, 6:1–3.
10

11 By overemphasizing views from highways and discounting views from more than five
12 miles, the Applicant is attempting to escape having to address the extent of the Project's impacts.
13 Given the substantial importance of the Columbia River Gorge and its scenic views, animated
14 simulations from select viewpoints are necessary to fully inform the Council and the public about
15 the likely impacts of the Project.
16

17 **5. The Applicant's attacks on Mr. Apostol's testimony are not supported by the**
18 **record and are contradicted by comments from expert agencies.**

19 The Applicant argues that Mr. Apostol's critique of the Whistling Ridge Project is
20 erroneous and based on unsupported assumptions. App. Op. Br. at 40–45. Contrary to the
21 Applicant's attacks, a complete reading of Mr. Apostol's testimony along with other commentary
22 in the record shows that the purported "assumptions" are actually well-grounded analyses and
23 conclusions based on the fundamental principles of scenic resource management.¹⁸
24
25

26 ¹⁷ The Amended Application at 4.2-34 states that residences within five miles of the Project were
27 mapped in Figure 4.1-1, but that figure only shows residences within 1.5 miles of the Project.

28 ¹⁸ *See generally* Ex. 21.00; Friends Op. Br. at 19–21; Ex. 21.02; Ex. 21.04; Public Comment
#297.

1 For example, Mr. Apostol’s conclusion that all viewers from designated KVAs should be
2 considered sensitive is corroborated by the Forest Service’s comments, testimony by former
3 Forest Service landscape architect Jurgen Hess, and the scenic impacts assessment manuals
4 (including the FHWA Manual). Exs. 8.11c at 2–3; 9.03r at 46; 21.02 at 2; 21.04 at 1; 61.02 at 1;
5 Public Comment #398 at 1. In characterizing Mr. Apostol’s analyses and conclusions as a “safety
6 blanket of assumptions” (App. Op. Br. at 42:23), the Applicant ignores numerous expert
7 conclusions and even the FHWA manual that the Applicant purports to employ.
8

9
10 **6. The Applicant’s newly proposed turbine layout would not address the
11 adverse impacts identified by expert agencies.**

12 The Applicant argues that its newly proposed, unmapped, unmodeled, and unanalyzed
13 Project layout would reduce scenic impacts. App. Op. Br. at 34:15–20. The Applicant offers no
14 evidence to support its argument. For instance, whether the Applicant’s proposal would actually
15 reduce the chaotic appearance of the Project and reduce scenic impacts to an acceptable level (as
16 the Applicant argues) requires real analysis. The Applicant’s blanket assumptions neither suffice
17 as evidence nor as an adequate mitigation measure.
18

19 Moreover, under the Applicant’s future proposal, the fundamental problems with the
20 Project still remain. The most problematic, highly visible turbine strings would still be part of the
21 Project. The facility would still appear as a chaotic array of moving blades as viewed from long
22 stretches of nationally significant viewing areas. The Project would still break the skyline of
23 significant landscapes such as Underwood Bluff and Chemawa Hill. And the Project would still
24 flash an unknown number of lights throughout the night sky for miles around.
25

26 Multiple authorities, including the National Park Service and the Counsel for the
27 Environment, have recommended the removal of turbines A1 through A7. Counsel for the Env’t
28

1 Br. at 17–18¹⁹; Exs. 21.04 at 3, 21.05 at 2. However, the Park Service makes it clear that removal
2 of these turbines should be only the *starting point* for mitigating scenic impacts. Ex. 21.04 at 3.
3 Moreover, numerous commenters, including the Forest Service, explain that multiple turbines in
4 the Project (not just A1–A7) would cause significant adverse scenic impacts. *See* Ex. 21.02 at 4.

5
6 Although the Applicant has not yet announced the details of its future Project layout, the
7 Applicant has made it apparent that it has no plans to address the fundamental problems with the
8 Project and its scenic impacts. Even if the impacts of the purported “worst-case” scenario
9 simulated by the Applicant are slightly reduced, the impacts to the Columbia River Gorge’s
10 landscapes would still be unacceptable. The Project should be denied.

11 **B. The Applicant has not met its burden to provide reliable information that will ensure**
12 **minimal adverse effects on the ecology of the land and its wildlife.**

13
14 The Applicant bears the burden to produce reliable data to ensure “minimal adverse effects
15 on the environment, ecology of the land and its wildlife.” WAC 463-14-020(1). Here, the
16 Applicant has not provided the Council with reliable information. Unless and until the Applicant
17 provides the required information, site certification should be denied.²⁰

18
19 **1. The Applicant has not complied with the avian survey requirements of the**
20 **WDFW Guidelines.**

21 When, as is the case with the Whistling Ridge site, there is “limited or no relevant data
22 regarding [avian] seasonal use of the project site,” the WDFW Wind Power Guidelines require
23

24
25 ¹⁹ The Counsel for the Environment also includes a footnote discussing the need to ensure off-site
26 mitigation measures for scenic impacts if turbines A1 through A7 remain in place. Counsel for the Env’t
27 Br. at 18, n. 14. Any off-site scenic mitigation should be tied to the whole Project, because multiple
28 turbines (not just A1–A7) would create significant adverse scenic impacts. *See* Ex. 21.02 at 4.
Unfortunately, the Applicant has failed to propose any meaningful on-site or off-site mitigation measures
that can be reviewed by the parties and the Council.

²⁰ For purposes of this adjudication, Friends adopts the issues raised by Seattle Audubon.

1 the Applicant to conduct “two or more” full years of avian surveys. Ex. 6.09c (WDFW
2 Guidelines) at 4. According to the WDFW, this requirement reflects the fact that “some species
3 may not breed or be present every year, and this would require that more than one year of
4 surveys be conducted to better understand their use of or occurrence at the site.” *Id.* at 2. In
5 addition, populations can fluctuate dramatically from one year to the next for any given season.
6 *See* Ex. 22.00 at 8:5–16, fig. 2. Without examination of whether such inter-annual variations
7 occur, reliable predictions of project impacts cannot be made.
8

9
10 Here, the Applicant has failed to present any preexisting avian data at the Project site, thus
11 triggering the requirement to conduct two full years of surveys. Unfortunately, the Applicant has
12 utterly failed to conduct the required two years of surveys, instead piecing together partial
13 surveys from different years, for a sum total of only nine months.²¹ Indeed, the Applicant *never*
14 surveyed from mid-July to mid-September, a key migration period for several species. *See*
15 Friends Op. Br. at 44:23–45:22. In other words, not only has the Applicant failed to conduct the
16 required two years of surveys to show inter-annual variation during this summer/fall migration
17 period, *it failed to conduct any surveying whatsoever for this period.*
18

19
20 The WDFW Guidelines also require a minimum “one full year” of surveys even when
21 relevant data is *not* lacking on seasonal use of the site. Ex. 6.09c (WDFW Guidelines) at 4. Yet
22 the Applicant did not comply with that requirement either. Here, “one full year” must be read to
23 mean a consecutive, year-long study. This allows for a full picture of the seasonal transitions at
24 the site within that year. *See id.* at 2 (“[W]ildlife can be present during one or more seasons or
25

26 ²¹ The list of dates provided in Friends’ opening brief contained a typographical error in one of
27 the dates. *See* Op. Br. at 43 n. 18. The correct dates for the Applicant’s nine months of surveys are
28 September 11 to November 4, 2004; May 15 to July 14, 2006; and December 4, 2008 to May 29, 2009.
DEIS at 3-60; *see also* Ex. 6.00 at 5:6–8.

1 life stages at a project site, and this seasonality should be taken into account.”). Without a
2 continuous year of surveys, such intra-annual variations may very well go unnoticed.

3 In this case, not only did the Applicant fail to perform a continuous year of surveys, it
4 began its fall surveying partway through that season, increasing the likelihood it did not
5 adequately document species migrating at that time of the year. *See* Ex. 6.08c at 2; Jan. 6, 2011
6 Tr. at 672:8–14.

7
8 The WDFW’s minimum requirement of one full year of surveys also reflects the fact that
9 data cobbled together from multiple years presents the inherent risk that surveys will eventually
10 become outdated, no longer accurately representing conditions at the Project site. For example,
11 the *only* survey conducted by the Applicant in the fall (and a partial survey at that) occurred six
12 and a half years ago. DEIS at 3-60 (September 11 to November 4, 2004). The Applicant fails to
13 show this data is still relevant and reflects current conditions at the site.
14
15

16 In fact, the recent discovery of a northern spotted owl near the Project site illustrates that
17 conditions can change quickly and that survey data can become outdated. In a forested habitat
18 like this Project site, which undergoes periodic change as a matter of course and where virtually
19 nothing is known about how an industrial wind facility might affect wildlife, this is yet another
20 reason to require additional surveys beyond the bare minimum. Unfortunately, the Applicant has
21 not even complied with that bare minimum.
22

23 Despite failing to comply with the WDFW survey requirements, the Applicant would
24 have the Council believe that in terms of wildlife impacts, the WREP is “likely the most studied
25 wind project ever in the state of Washington.” App. Op. Br. at 6:26–7:1. This unsupported claim
26 ignores the testimony of the Applicant’s own witness, Greg Johnson, who admitted he had no
27
28

1 knowledge of the relative merit of the surveys performed at the other three wind facilities
2 proposed for forested habitats in the Northwest (Radar Ridge, Middle Mountain, and Coyote
3 Crest) as compared to this Project. Jan. 6, 2011 Tr. at 674:4–12.
4

5 In fact, unlike the Whistling Ridge Applicant, the developer of the Coyote Crest project
6 performed surveys during every consecutive month for more than a year, thus complying with
7 the plain language of WDFW’s minimum “one full year” requirement. Coyote Crest DEIS,
8 Appendix C, Table 1 (Jan. 2009).²² The Whistling Ridge Applicant’s assertions about its Project
9 being the most studied wind project in the state are self-serving and patently incorrect.
10

11 Here, the WDFW letters in the record do not discuss why that agency did not require two
12 full years of avian surveys. *See* Ex. 1.02r, 1.20r. It is also troubling that Exhibit 1.20r (a WDFW
13 letter dated Sep. 22, 2009) appears to be an unexplained change in the agency’s position after the
14 Applicant complained about the WDFW’s prior criticism of the Project. The Applicant has not
15 provided the necessary context to understand the WDFW’s letter.
16

17 The Applicant has not complied with the WDFW survey requirements. Its truncated
18 surveys cobbled together from different years do not provide the Council with “the best possible
19 information with which to make decisions about turbine placement [and] impact assessment.”
20 Ex. 6.09r at 2. Site certification should be denied unless and until the Applicant provides at least
21 two years of data that capture both inter-annual and intra-annual variations.
22

23 ///

24 ///

25
26
27 ²² Available at <http://lewiscountywa.gov/attachment/3118/DEISVolume2AppendixC.pdf>. Friends
28 requests that the Council take official notice of this fact stated in the Coyote Crest DEIS pursuant to WAC
463-30-230(1)(a), (b).

1 **2. The Applicant has not shown that its methods and data constitute best**
2 **available science.**

3 The WDFW Guidelines require the Applicant to use “best available science” (“BAS”) in
4 assessing potential wildlife impacts. Ex. 6.09r at 4 n. 1. The Applicant makes the broad, vague,
5 and unsubstantiated assertion that it has provided and used best available science (App. Op. Br.
6 at 4:8), but never once even attempts to *explain* what best available science is, nor *why* its
7 methods and data constitute best available science. Instead, the Applicant simply describes how
8 it surveyed the Project site, and then makes the leap to deem its efforts best available science.
9 App. Op. Br. at 4:8–5:7. The Applicant has not met its burden.

10 As discussed above, the Applicant did not even gather a full year’s worth of avian survey
11 data—let alone the two years’ worth of data required here—thus failing to account for inter-
12 annual and intra-annual variations, as well as significant migratory periods. The Applicant’s
13 failures belie any argument that it used best available science.

14 In addition, the Applicant did not adjust its survey efforts to account for factors that
15 inhibit avian visibility in mountainous, forested environments (such as tree cover, cloud cover,
16 and terrain). Ex. 22.00 at 6:15–17. Because these limiting conditions interfere with the ability to
17 see birds from a distance, they inherently underestimate the actual population numbers. *See id.* at
18 6:12–21. Yet, there is no indication that the Applicant accounted for these factors. The
19 Applicant’s failure to address these factors raises the question whether its predictions for low
20 avian mortality can be trusted.

21 Despite these problems, the WDFW inexplicably announced in a September 2009 letter
22 that it would simply treat *any* future data prepared by the Applicant as best available science,
23 effectively cutting the Applicant a blank check on this issue. *See* Ex. 1.20r (Sep. 22, 2009 letter)

1 at 1 (“We will . . . treat any additional information you may submit in the future as BAS.”). The
2 record does not provide any indication of how, or even whether, the WDFW assessed the
3 Applicant’s surveys and methodologies for their reliability.
4

5 The Council must assess for itself whether the Applicant provided information that will
6 “credibly and appropriately inform the decision-making process.” Ex. 6.09c (WDFW
7 Guidelines) at 3. Here, among other problems, the Application has not provided information on
8 key migration seasons, has not provided the required full two years of avian surveys so that inter-
9 annual and intra-annual variation may be evaluated, and has not compensated for lack of
10 visibility during its surveys at the Project site.
11

12 Not only would the Applicant have the Council accept its truncated on-site surveys, it also
13 argues that its cumulative impacts analysis should be deemed best available science, even if the
14 regional data that underlies that analysis is unreliable. *See* App. Op. Br. at 5:23–6:8. The
15 Applicant does not even quarrel with the fact that its regional data has a high rate of error
16 because it was drawn only from areas where birds congregate, thereby overestimating regional
17 populations. *See* Ex. 22.00 at 26:20–27:15. The Applicant’s only defense of its cumulative
18 impacts analysis appears to be that it cannot find a better way to assess regional populations than
19 the methods its consultants have already attempted. App. Op. Br. at 6. The Applicant fails to
20 meet its burden.
21

22 The first step to assessing population impacts is to gather information about species’
23 ranges, concentrations, and numbers. *See, e.g.*, Ex. 6.09c (WDFW Guidelines) at 2 (“[S]ome
24 species have substantially larger home ranges than others, and assessments should take these
25 species-specific differences into account.”). Thus, the very first step for assessing impacts under
26
27
28

1 the WDFW Guidelines is to collect and map all available information from resource agencies,
2 scientific and academic sources, and other project developers. *See id.* at 3–4. But the Applicant’s
3 witness Mr. Johnson admitted he did not even comply with that very first step. Jan. 6, 2011 Tr. at
4 674:17–18, 702:2–8. By failing to gather, map, and provide all available data for all potentially
5 affected species, the Applicant has failed to provide a foundation for a proper analysis of
6 population impacts.
7

8 As Seattle Audubon has pointed out, the Applicant did not even utilize available data it
9 already knew about. The Applicant’s expert Mr. Johnson admitted that he was well aware of
10 regional data for at least two sensitive species that use the project site: olive-sided flycatcher and
11 Vaux’s swift. Yet, Mr. Johnson failed to consult even that readily available information. Seattle
12 Audubon Op. Br. at 5:14–21 (citing Jan. 6, 2011 Tr. at 16–19).
13

14 Finally, the Applicant’s unreliable cumulative impacts assessment underscores the need for
15 further on-site study to ensure that local populations of sensitive species are not harmed. *See Ex.*
16 *6.09c* (WDFW Guidelines) at 3 (“although application of some off-site information . . . may be
17 appropriate, multiple factors may complicate extrapolation and result in the need for local
18 information.”). This is yet another reason why the Applicant must undertake a multi-year survey.
19

20
21 **3. Dr. Smallwood’s recommendations are consistent with the WDFW Wind**
22 **Power Guidelines.**

23 The Applicant would have the Council disregard the entirety of the testimony of Friends’
24 and SOSA’s wildlife expert Dr. K. Shawn Smallwood. The Applicant’s entire criticism focuses
25 on Dr. Smallwood’s errata sheet, which corrected only two paragraphs of his testimony. *See*
26
27
28

1 App. Op. Br. at 5:23–6:23; Ex. 22.00E.²³ The Applicant does not make a single substantive
2 criticism of the remainder of Dr. Smallwood’s testimony.

3 As a last ditch tactic, the Applicant now argues that to accept any of Dr. Smallwood’s
4 recommendations would “deliberately disregard” the WDFW Wind Power Guidelines, contrary
5 to WAC 463-60-332(4). App. Op. Br. at 7. Yet the Applicant’s own witness, Mr. Johnson,
6 conceded at the hearing that, contrary to his prior testimony, he could not identify a single
7 instance where Dr. Smallwood recommended a technique or study inconsistent with the WDFW
8 Guidelines. Jan 6, 2011 Tr. at 639:14–15 (“I’m not saying anything he advocates is
9 inconsistent.”). Nor does the Applicant identify any inconsistencies now.

12 Not only does the Applicant ignore testimony from its own witness, it misunderstands the
13 nature of Dr. Smallwood’s testimony, which discusses, in large part, issues that the Guidelines
14 do not fully address. For example, as Dr. Smallwood explains, the Guidelines encourage wind
15 developers to “avoid high bird and bat aggregation areas, and areas used by sensitive status
16 species,” but do not specify what studies are necessary to identify and avoid those areas. Ex.
17 6.09c (WDFW Guidelines) at 5; Ex. 22.05r at 3:13–20. Dr. Smallwood also explains that the
18 Guidelines do not provide guidance on how to predict avian impacts. Ex. 22.05r at 4:18–23. For
19 example, the Guidelines do not explain how to assess collision risk at night or during inclement
20 weather, which the Applicant must do pursuant to WAC 463-60-332(2)(g). Ex. 22.05r at 4:9–10.
21 The Guidelines do not explain how to perform post-construction monitoring. *Id.* at 5:2–19. And
22 Dr. Smallwood explains that the Guidelines do not list all the landscape features that can
23 contribute to high avian mortality, such as ridgelines where wind can funnel birds up to wind
24
25
26

27 ²³ No doubt Dr. Smallwood’s attention to detail in this respect reflects his years of involvement in
28 peer-reviewed science. *See* Ex. 22.01.

1 turbines located at the tops of slopes. *Id.* at 6:7–13. Dr. Smallwood has provided
2 recommendations for the Council to help fill in each of these gaps left by the WDFW Guidelines.

3
4 Ultimately, the Council has a duty, independent of WDFW, to ensure that this facility “will
5 produce minimal adverse effects on the environment, ecology of the land and its wildlife.” WAC
6 463-14-020. The Applicant essentially argues that the Council may not address any issue not
7 expressly stated in the WDFW Guidelines. The Applicant’s argument ignores the Council’s duty
8 to assess environmental issues, as well as the Council’s authority to address environmental issues
9 through adjudication, *even if no regulatory standard applies. See, e.g.,* Council Order No. 694 at
10 13–14 (April 15, 1996).

11
12 In short, despite its generalized attacks, the Applicant has not shown that any of Dr.
13 Smallwood’s recommendations are in any way inconsistent with the WDFW Guidelines.

14 **C. The Project will cause unacceptable significant adverse traffic impacts.**

15
16 In its opening brief, SOSA discussed the significant adverse traffic impacts of the project
17 on the Underwood community, including the frequent blocking of traffic in both directions along
18 Cook-Underwood Road. SOSA Op. Br. at 5–8. SOSA also argued that the Council should
19 require the Applicant to study alternative routes to avoid or minimize the traffic impacts of the
20 Project. *Id.* at 7–8. Friends adopts SOSA’s arguments regarding traffic impacts.

21
22 **D. The Applicant’s geotechnical analysis is inadequate.**

23
24 In its opening brief, SOSA explains why the geologic information submitted by the
25 Applicant is not the “comprehensive geologic survey” required by WAC 463-60-302. SOSA
26 noted that many of the proposed turbine sites are adjacent to very steep slopes designated as
27 landslide hazard areas and that only a preliminary analysis of the geotechnical issues was
28

1 undertaken. The geologist conducting the analysis was not aware of the height, weight or size of
2 the turbines, nor were test pits dug to the 30-foot depth of the turbine foundations. *See* SOSA Op.
3 Br. at 2–5. To preserve issues and to avoid duplication, Friends adopts SOSA’s arguments with
4 respect to geological issues.
5

6 **E. The Applicant’s noise analysis is deficient.**

7 In its opening brief, SOSA demonstrated the many ways that the Applicant’s noise
8 monitoring is deficient and unreliable and should be completely disregarded. SOSA Op. Br. at 8–
9 18. As with much of the Applicant’s submissions, the Applicant’s noise analysis was based on
10 the initial data for turbine size, and has not been updated to reflect the Applicant’s new plans. In
11 addition, the Applicant’s determination of the ambient noise level was defective, because it
12 placed the measuring devices in inappropriate locations, which skewed the results. The
13 Applicant’s long-term monitoring device could not record any sound lower than 38dB, which
14 resulted in an artificially higher ambient noise level. Different methodologies were used to
15 determine the ambient noise at different locations. Finally, the Applicant failed to follow
16 required measurement protocol. Friends adopts SOSA’s arguments on issues pertaining to noise.
17
18

19 **F. The Project would contribute little to no electric power to meet the State of**
20 **Washington’s needs.**

21 The Council is required to meet the “growth in energy demands in the state of
22 Washington” by ensuring that new energy projects will “provide abundant energy at reasonable
23 cost.” RCW 80.50.010; *see also* WAC 463-14-020(3). Here, the Whistling Ridge Project would
24 contribute little to no energy to meet the State’s needs.²⁴
25
26

27 ²⁴ SOSA has thoroughly addressed the issues of energy demand and supply in its briefing. Friends
28 adopts SOSA’s issues and arguments on these topics.

1 First, even the Applicant admits that the proposed 75 MW maximum energy capacity²⁵ for
2 the Whistling Ridge Project would make it one of the least productive wind energy projects in
3 the entire state. Jan. 3, 2011 Tr. at 73:7–10. And the Applicant further alleges it would not be
4 able to expand the Project beyond its proposed boundaries onto adjacent land, which means the
5 Project’s capacity is effectively capped at 75 MW or less. Jan. 3, 2011 Tr. at 153–54.

7 Within the context of the State’s current wind energy supply, the proposed 75 MW
8 capacity for this Project would be a mere drop in the bucket. Exhibit 30.08 shows that there are
9 currently 4,868.9 MW of wind projects operating, under construction, and/or approved in
10 Washington State, plus another 2,727 MW of proposed wind projects, for a total of 7,595.9 MW
11 of capacity. Thus, the WREP would be only one percent of the state’s wind energy supply.

13 In addition, the state’s current supply is more than adequate to meet foreseeable demand.
14 In the BPA’s words, “generating capacity is being developed in the Northwest far in advance of
15 regional power demand” (Ex. 30.12 at 1) and “[t]he Pacific Northwest currently has a healthy
16 reserve margin of energy” (Ex. 30.09 at 9). And according to the Northwest Power and
17 Conservation Council, much of the Northwest’s future demand will be met through increased
18 conservation and energy efficiency. Ex. 30.04 at 3-2.²⁶

21 Second, the Applicant has been completely unwilling to ensure that the Project’s energy
22 output would actually benefit the citizens of Washington State—even though the Application
23 asserts this is a primary purpose of the Project. Amended Application at I-1. If the Project were
24

25 ²⁵ Given the intermittent nature of wind as an energy resource, the *average* energy output of the
26 proposed Project would be much less, at roughly 25 MWa. *See* Ex. 30.00 at 9–10 (explaining that the
27 facility would likely operate at 32% of capacity on average); Public Comment #350 (National Renewable
28 Energy Laboratory report estimating commercial wind potential based on a 30% capacity factor).

²⁶ The Applicant admits that increased efficiency and conservation will play a significant role in
meeting the State’s future demand, even if the Project is not built. *See* Amended Application at 2.19-6.

1 built, we can expect its power would benefit end users in California,²⁷ where the demand for
2 wind energy far outstrips that of Washington. Ex. 30.00 at 25–27; SOSA Op. Br. at 48–51.
3 Indeed, California is already using the majority of Washington’s current wind energy output.
4 SOSA Op. Br. at 49:6–17 (citing Ex. 30.09 at 3; Ex. 30.12 at 1; Jan. 7, 2011 Tr. at 1044). Well
5 aware of these facts, the Applicant refuses to even give a “preference” to Washington utilities
6 over California utilities, all other things being equal. Jan. 3, 2011 Tr. at 160.

7
8 The writing is on the wall: this Project will very likely do *nothing* to meet Washington
9 State’s energy needs, but rather would benefit consumers in the State of California. And even if
10 the Project were to supply its energy to Washington’s citizens, the amount would be negligible in
11 the context of the State’s total capacity.

12
13 **G. The County exaggerates the potential benefits of the Project to the local economy,**
14 **even while failing to acknowledge its potential harm to the economy.**

15 Skamania County attempts to argue that it is in dire economic condition. Cty Br. at 2–3, 4–
16 5. However, measured by the most recent U.S. Census data, job growth, incomes, and home
17 ownership are all growing in Skamania County even without the marginal benefits that would be
18 gained from the WREP. *See* SOSA Br. at 31–32 (citing Ex. 42.03C).²⁸

19
20 The County also exaggerates the Project’s potential benefits to the local economy. Cty Op.
21 Br. at 1–5. Most of the Project’s employment and economic benefits would actually be exported
22 to other communities in the region. *See* SOSA Br. at 29:11–18. Construction wages and resulting
23 benefits to the local economy have also been exaggerated. *See id.* at 29–31.

24
25
26 ²⁷ The Applicant testified that it would sell the power from its Project “to the highest bidder” in an
27 effort to “maximize [the Applicant’s] investment.” Jan. 3, 2011 Tr. at 122 (testimony of Jason Spadaro).
28 Utilities in California are likely to pay a higher price than utilities in Washington. Jan. 11, 2011 Tr. at
1282:18–23 (testimony of Tony Usibelli).

²⁸ Friends adopts SOSA’s arguments on socioeconomic issues.

