I hereby certify that I have this day served the following document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120-(3). Dated at The Dalles, Oregon this 19th day of August, 2009.

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of: EFSEC Application No. 2009-01 Whistling Ridge Energy, LLC Whistling Ridge Energy Project	**STATEMENT OF LEGAL POSITIONS** **by** **SKAMANIA COUNTY** **AGRI-TOURISM ASSOCIATION**

Pursuant to Prehearing Order No. 1, Council Order No. 842, Intervenor Skamania County Agri-Tourism Association (SCAA) provides the following summary of legal arguments it intends to make in the above-cited proceeding. As stated in SCAA's petition for intervention:

> *SCAA seeks intervention to argue a unique and narrow position: the Council should re-site the seven southernmost "A Towers." *** Agri-tourism is a growing and potentially significant component of Skamania County's economy, the potential of which has only barely been tapped. Economic studies show that agri-tourists seek bucolic landscapes undisturbed by industrial uses such as 40-story wind turbines. *** SCAA members' nascent agri-tourism businesses will be "nipped in the bud" if the A Towers are constructed in the proposed location. *** No other parties specifically advocate solely for re-siting of the seven southernmost "A Towers." *** SCAA will support the entire proposal if the seven southernmost A Towers are relocated such that their visual impact does not adversely alter the rural landscape upon which SCAA's businesses depend. SCAA will assist the Council in understanding why the seven southernmost "A Towers" in their proposed location are inconsistent with the county land use policy and regulations, and why simply moving them prevents these violations.*

Applicable criteria are in bold text.

1) **RCW 80.50.010 Energy Facilities — Site Locations Legislative finding — Policy — Intent**

   (2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

   SUMMARY OF SCAA LEGAL ARGUMENTS: The seven A Towers do not enhance, but significantly detract from, the public's opportunity to enjoy the esthetic and recreational benefits of agri-tourism in Skamania County. Relocating the seven A Towers towers would mitigate the worst of this.

2) **WAC 463-60-362 Built environment -- Land and shoreline use.**

   (1) The application shall identify land use plans and zoning ordinances applicable to the project site.

   SUMMARY OF SCAA LEGAL ARGUMENTS (in the alternative): 1) The new zoning code initially adopted by Skamania County in 2007 is not applicable because it is not complete. The county has not conducted a necessary EIS on the proposed zoning ordinance and map.[1] EFSEC cannot consider a draft, unadopted zoning code and map, as urged by Applicant. 2) The 2007 comprehensive plan is applicable and does not permit wind energy facilities. Skamania County is stopped from arguing otherwise. 3) The existing zoning code is not effective because it is not consistent with the 2007 comprehensive plan. 4) If the existing zoning code is applicable, the seven A Towers do not satisfy its criteria because a) The seven A Towers are not permitted in the Residential 10 and Resource Production zones, or b) If permissible as conditional uses, the seven A Towers do not satisfy the conditional use criteria.

3) **WAC 463-60-362(3):**

   Aesthetics. The application shall describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain.

   SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will present evidence demonstrating that the application severely under-represents the significant adverse aesthetic impacts.

4) **WAC 463-60-362(6)**

   Agricultural crops/animals. The application shall identify all agricultural crops and animals which could be affected by construction and/or operation of the facility and

[1] *See* Letter from Save Our Scenic Area (SOSA) to EFSEC (May 6, 2009), incorporated herein by reference.

any operations, discharges, or wastes which could impact the adjoining agricultural community.

SUMMARY OF SCAA LEGAL ARGUMENTS: The application severely under-represents the significant adverse impacts of the seven A Towers on agri-tourism.

5) **WAC 463-60-535**

Socioeconomic impact. The application shall include a detailed socioeconomic impact analysis which identifies . . . with particular attention to the impact of the proposed facility on . . . [the] local economy. The study area shall include the area that may be affected by employment within a one-hour commute distance of the project site . . .

SUMMARY OF SCAA LEGAL ARGUMENTS: The application does not consider the current and future roles of tourism in Skamania County and the adverse effect of the seven A Towers on that significant economic generator.

6) **WAC 463-60-085**

General — Mitigation measures. (1) Mitigation measures summary. The application shall summarize the impacts to each element of the natural or built environment and the means to be utilized to minimize or mitigate possible adverse impacts during construction, operation, and decommissioning of the proposal, all associated facilities, and any alternatives being brought forward." "(2) Fair treatment. The application shall describe how the proposal's design and mitigation measures ensure that no group of people, including any racial, ethnic, or socioeconomic group, bear a disproportionate share of the environmental or socioeconomic impacts resulting from the construction and operation of the proposed facility.

SUMMARY OF SCAA LEGAL ARGUMENTS: The application does not consider the single most effective means of mitigating the aesthetic impacts of the proposal—i.e., relocating the seven A Towers. The application does not describe the disproportionate burden on agri-tourism caused by the towers.

7) **WAC 463-47-110**

Policies and procedures for conditioning or denying permits or other approvals. (1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions. (b) The council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may: * (d) The council shall ensure that presently unquantified**

environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will present evidence regarding, and suggest to the council means to achieve, the goals listed in WAC 463-47-110(1)(b) and (d) via relocation of the seven A Towers.

8) WAC 463-47-110

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether: * (iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.**

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will argue that relocation of the seven A Towers is the most reasonable and feasible mitigation measure that EFSEC can recommend.

9) WAC 463-28-060

Adjudicative proceeding.

(1) Should the council determine under WAC 463-26-110 a site or any portions of a site is inconsistent it will schedule an adjudicative proceeding under chapter 463-30 WAC to consider preemption.

****

(3) The council shall determine whether to recommend to the governor that the state preempt the land use plans, zoning ordinances, or other development regulations for a site or portions of a site for the energy facility or alternative energy resource proposed by the applicant.

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will argue that the seven A Towers as proposed are inconsistent with local land use regulations. However, preemption of local zoning will not be required if EFSEC requires, as mitigation, that those towers be re-sited to an area where zoning allows wind turbines.

10) WAC 463-47-110.

Policies and procedures for conditioning or denying permits or other approvals.

(1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

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

****

(d) The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

****

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

****

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will argue that the unique aesthetics of the Underwood area are presently unquantified, but deserve consideration because, among other things, they are the primary basis of the local tourism economy. SCAA will also argue that re-siting the seven southernmost A Towers is reasonable mitigation.

11) WAC 463-60-302

Natural environment — Earth.

(1) The applicant shall provide detailed descriptions of the existing environment, project impacts, and mitigation measures for the following:

(d) Unique physical features. The application shall list any unusual or unique geologic or physical features in the project area or areas potentially affected by the project.

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will argue that agri-tourism in Underwood and the Gorge are premised on its unique physical features, which are ignored by applicant.

12) WAC 463-47

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will challenge the adequacy of any EIS if it does not adequately address SCAA's issues of concern, as described herein.

13) WAC 463-60-342

Natural environment — Energy and natural resources.

(5) Scenic resources. The application shall describe any scenic resources which may be affected by the facility or discharges from the facility.

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will argue that the application fails to consider tourism and agri-tourism.

14) WAC 463-60-352

Built environment — Environmental health.

(1) Noise. The application shall:(d) Describe the mitigation measures to be implemented to satisfy WAC 463-62-030;

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will argue that the application fails to consider impacts on area wineries, event sites, and ag-tourism.

15) Micro v. Macro siting authority

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will argue that EFSEC has authority to re-site the seven southernmost A Towers, and should do so. EFSEC addressed similar issues in the in Kittitas Project.

16) Validity and scope of economic viability of project

SUMMARY OF SCAA LEGAL ARGUMENTS: SCAA will challenge, as the data supports it, the validity and scope of the economic viability of the proposed project vis-à-vis the economic detriment caused by the project. This may include analysis of the project without the A Towers, and/or with the A Towers re-sited.

DATED this 19th day of August, 2009.

By: _____

Isa Anne Taylor, WSBA # 37977
Attorney for Petitioner