ORIGINAL

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of: APPLICATION NO. 2009-01 of WHISTLING RIDGE ENERGY PROJECT LLC for WHISTLING RIDGE ENERGY PROJECT	**COUNCIL ORDER No. 868** **Whistling Ridge Order No. 23** **Adjudicative Order Resolving Contested Issues**

OVERVIEW

In this Order, the Energy Facility Site Evaluation Council (EFSEC or Council) determines that the adjudicative record in Application 2009-01 supports a recommendation to the Governor of the State of Washington to approve portions of a proposed site in Skamania County near Underwood, Washington, for the construction and operation of the Whistling Ridge Energy Project. The adjudicative record and decision will be forwarded to the Governor along with the Final Environmental Impact Statement (FEIS) and a separate Recommendation based upon this Order and the FEIS.[1]

Conclusions. This order would approve the Application, in part, based on the facts and arguments of record. The Order makes the following principal conclusions: (1) The Project is consistent and in compliance with the zoning ordinances and land use plan current at the time the Application was filed. (2) The scenic and cultural heritage of the Columbia Gorge is a state and regional asset warranting protection from visual harm independent of the designation of portions of the territory as a National Scenic Area. Wind turbine generators should be excluded from portions of the site where they would be prominently visible. (3) The Project will comply, if recommended mitigation measures are provided, with the Washington Fish and Wildlife Guidelines for wind generation facilities, which constitute appropriate standards for wind facilities in the state. (4) A suggested mitigation parcel may satisfy applicable mitigation standards inasmuch as it provides a habitat superior to a

[1] This Order is based on a record developed during proceedings under the state Administrative Procedure Act. RCW 34.05, as required by RCW 80.50.090(3). Using the results of this Order and the FEIS, the Council will submit a Recommendation to the Governor under RCW 80.50.100. The Council will recommend approval, approval in part, or disapproval of the application. If the Council recommends approval, in full or in part, the Council will also submit to the Governor a proposed Site Certification Agreement (SCA).

commercial forest habitat.[2] (5) Noise from Project operations will not exceed pertinent standards. (6) Public roads are adequate and private roads will be improved to allow transportation of construction materials to the site, subject to permitting as required for public road transportation. **Note**: ***The conclusion of this order regarding approval or denial of the Application is preliminary and subject to the Council's later concurrent consideration of the results of this order and the FEIS. If the Council recommends approval, it will forward to the Governor a separate Site Certification Agreement (SCA).[3] Any SCA will be based upon both this Order and the FEIS to ensure compliance with requirements and mitigation found necessary as conditions of facility construction and operation.***

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[2] While this suggested mitigation parcel was discussed extensively in the Adjudicative proceedings, it has not yet been offered formally to the EFSEC as a stipulated mitigation plan. Due to that fact, this Order does not address the mitigation parcel in the findings of Fact & Law.

[3] This order makes references to an SCA and describes terms to be included, if the Council recommends approval. Such references must be read to refer only to a *potential* SCA that will exist *only* if the Council recommends approval of the application in whole or in part.

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I. INTRODUCTION

A. PROCEDURAL SETTING

The Energy Facility Site Evaluation Council ("EFSEC" or "Council" in this order) is a body created in RCW 80.50 to recommend to the Governor whether and if so, on what conditions, applications to construct proposed energy facilities on sites within the State of Washington should be granted. The Council conducted this adjudicative proceeding in its review of the Application pursuant to RCW 34.05, as required by RCW 80.50.090(3) and WAC 463-30.

B. THE APPLICANT AND THE PROJECT

The Application: This is an application for a Site Certification Agreement allowing the Applicant, Whistling Ridge Energy Project LLC, to construct and operate a commercial wind power generation facility in Skamania County, Washington. Applicant is a Washington special purpose corporation, wholly owned by S.D.S. Co., LLC. Ex. 20, p. I.1-1. S.D.S. Lumber Company and Broughton Lumber Company are privately held corporations that own lands on which Applicant proposes to construct the Project.

The Project: Applicant proposes to use approximately 1,152 acres of land, now principally used in commercial forestry, for the Project. Approximately 384 acres would be permanently developed for placement of the turbine towers, access roads, substations, underground and overhead transmission lines, and an operations and maintenance facility. The Application seeks authority to operate no more than 50 wind turbines that would generate up to 75 MW of wind power. The Project would also require an interconnection transmission line and new Bonneville Power Administration (BPA) substation to allow interconnection with the existing BPA transmission system.

C. THE COUNCIL AND THE EFSEC REVIEW PROCESS

The Council is created by RCW 80.50. It consists of a chair, appointed by the Governor with the advice and consent of the Senate, and members from the Departments of Ecology, Fish and Wildlife, Natural Resources, Commerce, the Utilities and Transportation Commission and from each county or city in which the project is to be sited.[4]

In reviewing an application, the Council must complete several procedural steps. Here, it gave notice of the application and conducted an informational hearing in Skamania County, a land use hearing to assist in determining the Project's consistency with local land

[4] The Departments of Agriculture, Health, Military and Transportation have the option of sitting on the Council when it considers specific projects. RCW 80.50.030. None chose to do so in this proceeding.

use plans and zoning ordinances; [5] scoping meetings to receive comments on the scope of environmental review; hearings to receive comments on a draft environmental impact statement, and an adjudicative hearing.[6] It also considered written comments at each of these stages.

Council members presided at the adjudicative hearing. The Council consists of Council Chair James O. Luce and Members Richard Fryhling, Department of Commerce; Hedia Adelsman, Department of Ecology;[7] Andrew Hayes, Department of Natural Resources; Jeff Tayer, Washington Department of Fish and Wildlife; Dennis Moss, Utilities and Transportation Commission; and Doug Sutherland, Skamania County. The Council retained C. Robert Wallis as Administrative Law Judge for purposes of this proceeding.

The Council convened an adjudicative evidentiary hearing on January 3, 2011, in Skamania, Washington, that continued through January 7, reconvened on January 10 and 11, and concluded with a session in Olympia on January 20, 2011. The Council held hearing sessions in Underwood on January 5 and Skamania on January 6, 2011, for public comments. On January 20, 2011, the Council convened a hearing session in Olympia, Washington, to receive additional cross-examination and to address procedural matters.

The Council received post-hearing briefs from the Applicant, Association of Washington Business, Counsel for the Environment, Department of Commerce, Friends of the Columbia Gorge, Seattle Audubon Society, Save Our Scenic Area (SOSA), Skamania County and Klickitat Economic Development Council, and Skamania County Economic Development Council/Port of Skamania county/Skamania County Public Utility District. Pursuant to notice to parties, the Council visited and viewed the site of the proposed project on May 2, 2011, and on May 3 it viewed the site from viewing areas identified in the Application. The issues are now ready for resolution.

D. COMPLIANCE WITH RCW 80.50 AND STATE ENVIRONMENTAL POLICY ACT; RECOMMENDATION TO GOVERNOR

This order is required by RCW 80.50.090. The Council must also comply with the State Environmental Policy Act (SEPA). RCW 43.21C, and WAC 463-47. Before making its recommendation to the Governor, the Council must consider a Final Environmental Impact Statement (FEIS). In prior proceedings, the adjudicative order also constituted the Recommendation to the Governor. In this matter, however, production of the FEIS was delayed and it was not received in the adjudicative record. This order, therefore, does not consider the FEIS or its supporting documents, except those specifically received on the

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[5] RCW 80.50.090(2)

[6] RCW 80.50.090(3), referencing RCW 34.05. One adjudicative hearing session was convened in Olympia. The remainder were conducted in Skamania County.

[7] Ms. Adelsman was absent from the adjudicative hearing sessions but has read the record and reviewed the evidence presented.

record of the adjudication. This order is entered and served on parties as a discrete part of the recommendation to the Governor. RCW 34.05.473, RCW 80.50.

E. PUBLIC TESTIMONY AND COMMENT

The Council held two hearing sessions at which any person could be heard in support of, or in opposition to, the Application.[8] The Council also provided an opportunity for public witnesses to testify during the hearing on land use consistency. Sixteen witnesses testified during the land use consistency hearing and 65 public witnesses testified on the application hearing record.

The Council received 396 comment letters and evidentiary submissions regarding land use consistency and 399 written submissions regarding the application adjudication. Witnesses who spoke, and the citizens who submitted comments in writing, did so eloquently and sincerely both in favor of and in opposition to the project. Here we identify some representative comments to demonstrate the variety of opinions presented.

At the Underwood public hearing, 37 witnesses testified. Among them, Wirt Maxey urged the Council that recommending approval of this project would set a precedent that no place of natural beauty would be "off limits" to the development of tall, contrasting wind towers. Anita Gahimer Crow saw the project as an opportunity to make a model for coexistence of renewable power and the Scenic Area, much as sounds of modern rail and air transportation now coexist with sounds of elk, deer, cougars and birds.

At the Skamania session, 28 witnesses testified. Don Morby presented comments supporting the Project. He noted support in the community for renewable energy, identified effects of existing traffic and development on viewscape and the conversion from natural vegetation to farming and winemaking. He described the need for the employment and tax revenue that the Project would bring. Loreley Drach spoke in opposition to the project, noting the slight margin of voters approving Initiative 937 and urging that harm to wildlife and iconic views and to the Gorge tourism industry would outweigh benefits from the Project.

Persons who submitted written comments also presented thoughtful and heartfelt comments. James Kacena, for example, called attention to the contrast between the natural beauty of the Gorge and the modern engineered shapes of wind turbine towers, calling the contrast "jarring." Theresa and Darrell Lusty, in contrast, emphasized the clean nature of wind energy, its support of state clean energy mandates and the economic benefit to the community.

The Council understands that the comments reflect careful thought and time in preparation. It has reviewed the comments and it appreciates the efforts of the many commenters.

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[8] RCW 80.50.090; WAC 463-14-030.

II. LAND USE CONSISTENCY

This segment of our order considers "land use consistency." [9]

A. PROCEDURAL BACKGROUND

Skamania County updated its zoning ordinances in 2005 and its comprehensive plan in 2007. In October 2008, the County's Responsible Official issued a Mitigated Determination of Non Significance (MDNS) for a proposed, updated zoning code that would have made specific provisions for wind generation facilities. The county hearing examiner ruled on February 19, 2009 (Ex. 1.17c), however, that the County's MDNS was improper. She determined that a full review under the State Environmental Policy Act (SEPA) would be required before the changes could be adopted.[10] The County decided it would neither appeal the examiner's ruling nor attempt to cure the SEPA deficiency, asserting lack of funds and further expected legal challenges. Whistling Ridge then, with the County's support, filed an EFSEC application for site certification.

Applicant made its initial filing seeking Council review and approval on March 10, 2009. As required under RCW 80.50.090(2), the Council issued notice on April 22, 2009, that it would hold a public hearing on May 7, 2009, to determine whether the proposed project is consistent with local and regional land use plans and zoning ordinances governing the site. The hearing was held as noticed at Underwood, Washington, near the proposed Project site.

During the May 7 hearing, Skamania County Commissioner Jim Richardson, submitted Resolution 2009-22 from the Skamania County Board of Commissioners as a certificate of land use and zoning consistency (Land Use Exhibit 1, Ex. 2.02). Other interested persons, including parties to this adjudicative proceeding, presented statements and arguments for our consideration. The Council also received evidence regarding this issue during the adjudicative hearing on the merits of the Project. This includes a

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[9] The Council convened its Land Use Hearing on May 7, 2009 in Underwood, Washington. The Land Use hearing was conducted as an adjudication and completed, without objection, during the adjudicative proceeding identified above. We reach and announce our decision in this order. Current Council members Moss, Hayes and Sutherland did not attend the May 2009 session, but have read the record and reviewed the evidence there received.

[10] The result, which was not appealed, is a fact that is binding on this proceeding. The examiner in reaching her decision made numerous findings and conclusions about the proposed code, which is not before us. The concept of *res judicata* may apply in administrative proceedings. *DeTray v. City of Olympia*, 121 Wn. App. 777, 785, 90 P.3d 116 (2004). Contrary to assertions in parties' briefing, however, the examiner's findings of fact and conclusions of law do not bind us as they are based on a different record in a different context with different elements for a different purpose involving different parties. *Res judicata* does not apply to those findings and conclusions, which have no binding or precedential effect on the Council's discretion. *DeTray, supra; Rains v. State,* 100 Wn.2d 660, 674 P.2d 165 (1983).

substitute certificate of land use consistency from the County in the form of Resolution 2009-54, dated December 22, 2009, which was received on January 4 as Ex. 2.03 at TR 2:195 through witness Katy Chaney and supported by the later testimony of Skamania County Commissioner Paul Pearce.

The Applicant and the County contend that the Project is consistent with local land use regulations and plans. Friends and SOSA oppose a determination of consistency. The County's representation to this effect is *prima facie* evidence of consistency, but is not determinative if there is a challenge. WAC 463-26-090. Substantial evidence is required to overcome the weight of the *prima facie* certification and the evidence supporting it. If a challenge is raised to a County's finding of consistency, however, it remains our responsibility to determine consistency based on the parties' presentations and applicable law.

The project as proposed would be situated in territory zoned "Unmapped" and in territory zoned "FOR/AG20." Other decisions in this order would restrict the Project to territory in the "Unmapped" zone. For that reason, we find it unnecessary to decide consistency within the "FOR/AG20" zone.

B. DISCUSSION OF CONTESTED ISSUES

The range and intensity of the arguments over land use consistency and preemption in this proceeding are unprecedented. This is somewhat surprising given that the question of whether a proposed project is consistent with local land use requirements is not dispositive. If EFSEC determines after a hearing that it is consistent, the Council need do no more. RCW 80.50.110(1) simply is not implicated. There is no need to declare local law preempted and no need to discuss land use issues at any length in the Council's recommendation to the Governor, the adjudicative order or, if the Council recommends that the Project be approved, the SCA. If, on the other hand, the Council determines that it is inconsistent, the local land use requirements are preempted by operation of law.[11] The Council's obligation then is to consider measures that might remove or mitigate the inconsistent aspects of the project and the only issue is whether local land use control continues, or the EFSEC law (and conditions that EFSEC requires) will replace local provisions.[12] Friends and SOSA, parties opposing this application, nevertheless make numerous factual and legal arguments against consistency and against the County's view of its own land use regulation. Many of these arguments have little or no relevance to the proceeding, or legal support, but we address them briefly.

Friends argues that the substituted resolution is not a valid "certificate" under WAC 463-26-090 because the County did not identify the second certificate as a "decision." The document itself and the testimony of County Commissioner Pearce verify that Resolution 2009-54 is the County's certification to the Council upon a lawful vote of the Commissioners. The Council has no procedural requirements for validation of a certificate

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[12] RCW 80.50.110(2), WAC 463-28-070.

except lawful procedure, which is demonstrated here. Friends also argues that a certification of consistency is a decision requiring SEPA review under RCW 43.21C.030, citing a superior court order in another proceeding.[13] We reject this challenge as being unsupported. The decision was not offered into evidence during the hearing and no copies were provided to the Council or to other parties.[14] We nevertheless have examined the cited two-sentence order and find it does not support Friends argument. Indeed, the court *decided* that certificates of consistency are exempt from requirements of RCW 43.21C.030. *See*, RCW 80.50.110(2).

SOSA urges us to apply an "error of law," *de novo* standard that would look only to the language of the County's land use provisions and not how the county would apply them, how the courts interpret them or how the statute defines their purpose and use. It cites *Eugster v. City of Spokane*, 118 Wn. App. 484, 76 P.3d 741 (2003). We reject this notion. Our review is with a much different purpose from the review in *Eugster*. To determine whether there is consistency, we consider not only the language of the County provisions but also how the County would apply that language. *See, Freemen v. City of Centralia,* 149 Wn. App. 33, 202 P.3d 334 (2009).

SOSA disputes the County's description of the comprehensive plan as a guide rather than a mandatory standard. It notes that RCW 80.50 preempts RCW 36.70 and the Growth Management Act (citing *Residents Opposed to Kittitas Turbines v. EFSEC,* 165 Wn.2d 275, 197 P.3d 1153 (2008)) and urges us to ignore the interpretations of those elements by the body promulgating and enforcing them.

Accepting SOSA's argument would vitiate the entire purpose of the Council's consistency review, which is to recognize and validate local land use control, consistent with the purposes of RCW 80.50. See, RCW 80.50.100(1). Nevertheless, we recognize that our task is to determine whether the Project complies with the County's zoning ordinances and is consistent with its comprehensive plan, not whether the County might lawfully allow the Project under its own authority.[15]

SOSA argues that the County's adoption of comprehensive plan policies for application in SEPA review makes the policies mandatory for all applications. This is incorrect. The case SOSA cites, *West Main Associates v. Bellevue*, 49 Wn. App. 513, 742 P.2d 1266 (1987), involved a review of an application denied via a SEPA review, where the city's SEPA code *required* the application of comprehensive plan policies. The case is therefore irrelevant here. The question facing us does not involve a County SEPA review, but rather

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[13] *Columbia Riverkeeper v. Cowlitz County*, Cowlitz County Superior Court No. 07-2-00400-0, May 2, 2007).

[14] *See*, RCW 34.05.461.

[15] The statute does not define the phrase "consistency and compliance." The terms apply to land use processes, however. Zoning ordinances require compliance; they are regulatory provisions that mandate performance. Comprehensive plan provisions, however, are guides rather than mandates and seek consistency.

consistency with the comprehensive plan. Comprehensive plan goals are not mandatory without clear indication that such is required by the local jurisdiction.[16]

SOSA argues that the County's more recently adopted comprehensive plan takes precedence over its older zoning ordinance. SOSA relies on a case, also irrelevant here, where the more recent of two overlapping statutes was held to control.[17] In contrast, the comprehensive plan is by definition a guide to future action (RCW 36.70.020(6)) while the zoning regulation is by definition a current regulatory requirement. The statute is clear[18] and the courts agree.[19] When the two directly conflict, the zoning regulation applies for regulatory purposes, rather than the Plan's guide for future regulation. Skamania's comprehensive plan did not repeal or invalidate the zoning code.

SOSA argues that some language in the comprehensive plan could be read as mandatory. This argument is misplaced because, while the County could empower the Comprehensive Plan with mandatory general application, it is abundantly clear that it did not do so. The County prefaces the plan by defining its function clearly, as follows:[20]

> A comprehensive plan is an official public document that *guides policy decisions* related to the physical, social and economic growth of a county. It provides *a framework for future growth, development and decision-making.* A comprehensive plan is *not a regulatory document.* Rather, it is *a guiding document* which includes goals and policies that are *implemented through development regulations and other official controls. (Emphasis added.)*

Taking a second tack, the project's opponents challenge various state and local provisions relating to forest practices, which are also irrelevant here as being neither zoning ordinances nor land use plans within the meaning of RCW 80.50. These include a moratorium (Ex. 1.15c) on certain types of development of forest areas. Friends argues that allowing wind generation violates the Forest Practices Act, RCW 76.09, which is irrelevant to land use consistency. Friends also argues that past Forest Practices Act violations by a company related to Applicant affects Applicant's eligibility for future

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[16] SOSA argues that the County intended its comprehensive plan to be mandatory, citing *Cingular Wireless LLC v. Thurston County,* 131 Wn. App. 756, 129 P.3d 300 (2006). There, the court ruled that a County has the power to adopt general standards requiring compliance with its comprehensive plan. SOSA does not argue that Skamania did so, but that it *intended* to do so. SOSA's examples however, from Page 6 of the comprehensive plan, reinforce the County's position that the plan is a guide rather than a mandate.

[17] *Turnstall v. Bergeson,* 141 Wn.2d 201, 5 P.3d 691 (2000).

[18] RCW 36.70.340 says, "In no case shall the comprehensive plan, whether in its entirety or area by area or subject by subject be considered to be other than in such form as to serve as a guide to the later development and adoptions of official controls."

[19] *See, e.g.,Westside Hilltop v. King County,* 696 Wn.2d 171, 634 P.2d 862 (1981).

[20] Skamania County 2007 Comprehensive Plan, page 6.

conversions, basing this irrelevant contention on asserted documentation that is outside the record.

SOSA argues that the County, in limiting certain specific development applications, "effectively recognized that it would not tolerate the absence of any zoning" on lands in the "unmapped" zone. The allegation makes a leap of logic not required by any statute and not supported by evidence or reason.

Friends argues in its Land Use response brief that uncertainty exists about the capacity of access roads to carry construction loads to the site. This has no bearing on consistency, is not identifiably offered in response to any argument in opening briefs and is without support.

The Growth Management Act (GMA) sets a schedule in RCW 36.70A.130(4)(b) for the updating of land use provisions in every county. Friends urges that Skamania's apparent failure to meet the schedule requires automatic invalidation of the existing plan and codes. Friends cites no authority for this proposition and we find none.

Summary as to Zoning. We find that the Project is compliant with current zoning in the unmapped zone because wind generation has not been found a nuisance by a court having jurisdiction over the site.

Consistency with the Comprehensive Plan's Conservancy Designation. The Comprehensive Plan gives "designations" to territories within zones in the County. The Project falls within a zone that is designated as "conservancy." The Comprehensive Plan notes at page 22 that:

> The Land Use Element provides *a guide* to public development toward which public utilities and public services planning can be directed and provides a *guide* to private development by indicating those areas *most* suitable and economical for development. *(Emphasis added.)*

Taken together with the preface (Plan, p. 6, quoted above) and the statutory language (RCW 36.70.340, quoted above), as well as the County's certification of consistency and its representations in the hearing and briefing, it is unmistakable that the County intends its comprehensive plan to be a guide and not a regulatory mandate.

SOSA cites a hearing examiner finding that the comprehensive plan "does not contemplate" wind power. It argues this failure to "contemplate" wind-powered electricity generation in the comprehensive plan bars the County from allowing the use. It cites no authority for this assertion. "Contemplation" of a use in a comprehensive plan is not a mandatory prerequisite for approval of that use. The Plan is a guide, not a mandate; it does not set out regulations for specific uses (2007 Comprehensive Plan Introduction, p. 7, first paragraph) and by its own terms it does not foreclose unmentioned uses (Comprehensive

Plan Policy LU.1.2; limitations to specific uses are required in that section under *future* regulations that "should be established" as defined in Policy L.U.6.1 at page 30 of the Plan).

The comprehensive plan thus does contemplate that future zoning regulations will establish specific uses within "designated" areas. It directs that if a use is not listed as allowable, review, or conditional (in such future regulations), "*then* the use is prohibited." (Policy L.U.6.1, emphasis added.) Opponents argue instead that the illustrations of potential uses given in the Comprehensive Plan have regulatory force; we reject that notion and its corollary that if wind turbine generators facilities are not listed, they are forbidden. In the absence of specific regulations, we examine the County's stated interpretations and analogize to existing provisions.

The guiding purpose for this use designation, according to the Plan, is to "conserve and manage existing natural resources in order to maintain a sustained resource yield and/or utilization." The proposed use appears entirely consistent with that purpose.[21]

The wind generation facility will maintain a sustained resource yield and utilization of wind energy, a natural resource. In addition, as the Applicant contended, its operation will help to support the continued sustained use of the majority of the site for timber production. In many ways, wind production is a less intensive use than industrial agriculture, which requires intensive harvest activities and sometimes on-site processing. It appears to be a less intensive use than a surface mine (mentioned as an example of a conditional use in the Conservancy designation), which throughout its lifetime requires onsite workers, noisy equipment and transportation of product in heavy equipment and may leave permanent scars on the landscape.

The project is permitted as of right in the underlying unmapped area. The County's valid certification provides *prima facie* support for a finding of consistency. The language of the Conservancy designation supports a finding of consistency. The County's attempt to update zoning ordinances to better mesh with the comprehensive plan was rejected on review for failure to complete an environmental review, which the Council is conducting for this Project. Opponents offer a large number of citations and arguments, but we find not one referenced authority that requires the result they advocate.

We conclude that the evidence and applicable law support the County's certificate of consistency, that Project opponents have failed to present a credible case against it, and that the Project is therefore consistent with the Conservancy designation in the Comprehensive Plan. The County will be prohibited from changing the land use plan and zoning ordinances applicable to project lands for the life of the Certificate. RCW 80.50.090(2).

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[21] Air and the force of wind are identified as natural resources. *See, e.g., Wikipedia, the Free Encyclopedia.* We find no definition of "natural resource" in the Skamania County comprehensive plan or land use code chapter.

III. ADJUDICATIVE PROCEEDING

The Application was filed on March 10, 2009 and a revised application on October 12, 2009. The Council issued its Notice of Intent to Hold Adjudicative Proceeding, Notice of Opportunity and Deadline to File Petitions for Intervention, and Notice of Prehearing Conference on June 25, 2009. Numerous prehearing conferences were held pursuant to notices to parties. The hearing on the application was heard in formal adjudicative sessions, pursuant to notice, on January 3-7, 10-11 and 20, 2011, in Stevenson, Underwood, and Olympia, Washington.

A. PARTIES

The parties appeared and were represented as follows:

Applicant, Whistling Ridge Power Project LLC: Timothy McMahan, attorney, Stoel Rives, Vancouver, Washington and Erin Anderson, attorney, Stoel Rives, Seattle, Washington and Darrell Peeples, attorney, Olympia, Washington.

Counsel for the Environment: Bruce Marvin, Assistant Attorney General, Olympia, Washington.

Department of Commerce: Dorothy H. Jaffe, Assistant Attorney General, Olympia, Washington.

Friends of the Columbia Gorge: Gary K. Kahn, attorney, Reeves, Kahn & Hennessy, Portland, Oregon, and Nathan Baker, attorney, Portland, Oregon.

Save Our Scenic Area: J. Richard Aramburu, Attorney, Aramburu & Eustis, LLP, Seattle, Washington.

Skamania County: Susan Drummond, attorney, Seattle, Washington.

Seattle Audubon Society, by Shawn Cantrell, Executive Director, Seattle, Washington.

Economic Development Group of Skamania County: Ron Cridlebaugh, Executive Director, Skamania, Washington.

Skamania County Public Utility District No. 1, Kenneth B Woodrich, attorney, Stevenson, Washington.

Skamania County Economic Development Council, Peggy Bryan-Miller, Stevenson, Washington.

Skamania County Agri-Tourism Association, John Crumpacker, Underwood, Washington.

Association of Washington Business, by Chris McCabe, Olympia, Washington.

City of White Salmon, by David Poucher, Mayor, White Salmon, Washington.

Klickitat County Public Economic Development Authority, Michael Canon, Executive Director, Goldendale, Washington.

Klickitat and Cascades Tribes of the Yakama Nation, Wilbur Slockish, Jr., Bingen, Washington.

Port of Skamania County, Bradley W. Andersen, Schwabe, Williamson & Wyatt PC, Vancouver, Washington.

Confederated Tribes and Bands of the Yakama Nation, by George Colby, attorney, Toppenish, Washington.

Two of the parties, Friends and SOSA, consistently presented arguments generally and specifically opposing the Application on various grounds. The two parties generally argued different issues in the final adjudicative briefing process, but each party affirmed the arguments of the other for a unified position. Consequently, we occasionally refer to them collectively as "Opponents."

B. NEED FOR THE PROJECT AND COMFORMITY WITH LAW

State law establishes policies on which the Council's authority is based. With regard to need for energy facilities and broader interests of the public, RCW 80.50.010 provides as follows:

> It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of such facilities will produce minimal adverse effects on the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent of the law to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

Another aspect of need, regarding the economic viability of an applicant's project and aspects of market demand, was resolved in *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 197 P.3d 1153 (2008). Need in this regard is an applicant's business decision outside the scope of the Council's review.

In this proceeding, Project opponents argue that there is no need for this project because there is an abundance of wind power, a renewable resource. SOSA opening brief, pp. 32ff. However, as Mr. Schwartz's testimony reflects, a state policy supports the development of power that satisfies renewable energy requirements. *See*, RCW 19.29A and RCW 19.29A.090. Chapter 19.285 RCW (Initiative 937) establishes a renewable portfolio standard (RPS) that requires 15 percent of the energy provided by major utilities in Washington to be from renewable resources by 2020. Thus, irrespective of the region's ability to meet much of its power growth requirements through conservation and existing resources, there is a legal requirement to increase the proportion of power obtained from renewable resources and to reduce reliance on carbon-based fuels.

Consistent with the state's policy and legal requirement to support renewable resources, the Council must consider whether this project will produce a net benefit after balancing the legislative directive to provide for abundant energy at a reasonable cost with the impact to the environment and the broad interests of the public. Here, on the basis of the entire adjudicative record, with the findings and conclusions set out below and with the project's conditions and modifications required in this Order and the Recommendation to the Governor, the Council finds that the Project conforms to the legislative intent expressed in RCW 80.50.010.

C. APPROPRIATE CONDITIONS

As the Applicant has pointed out, the hearings in this aggressively litigated proceeding appear to have set a record for length, volume, and number of issues addressed for a facility of this type. Subject matter experts and local lay witnesses – who often have valuable personal and practical awareness of particular concerns – have shared their views about such specific issues as effect on aesthetics, avian and terrestrial wildlife, cultural heritage, noise, and infrastructure demands, as well as the scenic heritage and the potential economic consequences that could be affected by allowing or rejecting the Project.

As our response to specific evidence and argument on this record, we identify required location, construction and operating limitations in this Order and will refine them as needed in our Recommendation to the Governor and in its accompanying Site Certification Agreement, according to our review of the final EIS. These conditions also respond to expressed public concerns.

D. ENVIRONMENTAL DETERMINATIONS

1. AESTHETICS AND CULTURAL HERITAGE

The most hotly contested issue involved in this application, raising the greatest degree of public and intervenor attention, is aesthetics and cultural heritage. This is explained in significant part by the proximity of the project to the Columbia Gorge National Scenic Area.

The Setting. The Whistling Ridge Project is proposed for siting, in part, on a ridgeline above the community of Underwood in the Gorge. Turbines proposed for this ridgeline (A-1 through A-7) and a nearby ridge area (C-1 through C-8) would be prominently visible from certain locations within the Gorge. A majority of the proposed turbines, however, would be only partially visible from only a few viewing locations due to intervening terrain conditions. *See,* Table 1, page 23.

Significance of the scenic heritage issue. Portions of the Columbia Gorge between Washougal and Wishram, Washington are designated as a National Scenic Area (NSA) by Congress, and are administered in part through an interstate compact between Oregon and Washington. The Gorge is within the westernmost part of the trail established by the Lewis and Clark Expedition, which is recognized as a National Historic Trail. The Historic Columbia River Highway, designated a National Historic Landmark, is also within the NSA.

The scenic environment in the Gorge is a reflection of national heritage, but it is not a preservation of pristine heritage as it existed during periods of native civilization, periods of exploration, or periods of first settlement. A series of dams now slow the river, generate power for the Northwest and permit commercial barge transportation. Heavily traveled highways and rail lines follow both sides of the Columbia River, and commercial barge

traffic shares the river with divers, fishers and windsurfers. Industrial, commercial and residential development exists along the river. Electric and natural gas transmission lines, requiring clear cuts through forests their rights-of-way are visible in the vicinity of the proposed project and directly through the proposed site.

Yet, the resulting vistas support and maintain the area's designation as a National Scenic Area. Totally independent of its NSA designation, the Gorge remains a part of the heritage of Washington, Oregon and the native and resident peoples of the entire United States.

Effect of the National Scenic Area. Congress designated portions of the Gorge as a NSA in 1986. Management of the NSA includes participation by the U. S. Forest Service and, through an interstate compact between Washington and Oregon, the Columbia River Gorge Commission. Creation of the NSA required setting definite political boundaries. Authority under the Act stops at those boundaries. Development within the NSA is carefully restricted. The NSA restrictions, however, expressly do not apply to the land surrounding the NSA. Lands surrounding the NSA host "low intensity" uses including residences and farms. More intensive use for commercial forestry, including periodic clear cuts of significant acreages, also is evident. There is some urban development, including industrial development, both inside and outside the NSA.

The parties' positions. The most active parties – the applicant and its opponents, Friends and SOSA –take very different views as to the propriety of siting wind turbines on lands outside, yet prominently visible from points inside and outside, the Scenic Area.[22] Applicant points to the clear language of the Act that stops the NSA's jurisdiction at the NSA boundaries. Opponents of the Project agree that the proposed site is outside the NSA and that the Act creating it does not by its terms have direct legal application outside that boundary. However, they argue (to paraphrase) that the proposed facility will damage the scenic area and irreparably scar the natural scenic and cultural heritage it contains. They propose to apply NSA-like standards to enforce their position.

a) Challenge to Council Authority.

Applicant argues for the first time in its reply brief that consideration of aesthetic issues should be exclusively within the SEPA process because there are no performance standards for aesthetics in WAC 463-62, meaning the Applicant need only satisfy the informational standards set out in WAC 463-60-362(3).[23] Applicant nevertheless put on a

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[22] SOSA in its answering brief does comment favorably on certain mitigation measures including suggestions by Counsel for the Environment, which we describe below.

[23] WAC 453-60-362(3) reads as follows: (3) Aesthetics. The application shall describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain. The presentation will show the location and design of the facilities relative to the physical features of the site in a way that will show how the installation will appear relative to its surroundings. The

full case concerning aesthetics in the adjudicative process and devotes significant portions of its briefs to such issues.

RCW 80.50.010(2), however, includes specific reference to aesthetics and recreation.[24] RCW 80.50.040(8)[25] recognizes the Council's responsibility to develop site-specific criteria for approval, consistent with its obligation to take actions necessary to protect community interests without regard to preemption. RCW 80.50.100(1).[26] RCW 80.50.110 (declaring provisions in RCW 80.50 preemptive of inconsistent laws and rules)[27] and WAC 463-14-020[28] support the regulation of turbine aesthetics. Prior EFSEC orders include the regulation of views and viewscapes.

Indeed, the Council has directed modification of proposed turbine siting in response to viewscape concerns. In the Kittitas Valley application, 2003-1, the Supreme Court approved doing so, accepting the Council's consideration of standards presented via witnesses' testimony and the Council's exercise of judgment.[29] In deciding to accept the Council's overall recommendation in Kittitas Valley, but prior to final authorization, the Governor required the Council to review certain portions of the application with regard to view. The Council did so and required further alterations of turbine siting. The Council also considered and resolved aesthetic issues in the Desert Claim application, No. 2006-02.[30]

In this proceeding, the Council considers the testimony and documentary evidence, including each expert viewscape witness's discussion of standards, and decides the issues by applying the standards to the evidence in the record. The evidence in this matter

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applicant shall describe the procedures to be utilized to restore or enhance the landscape disturbed during construction (to include temporary roads).

[24] Council "action will be based on these premises: . . . (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."

[25] RCW 80.50.040(8): To prepare written reports to the governor which shall include: . . . (b) *criteria specific to the site*. . . (Emphasis added).

[26] RCW 80.50.100(1): The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility

[27] *See, also,* WAC 463-14-050

[28] In acting upon any application for certification, the council action will be based on the policies and premises set forth in RCW 80.50.010 including, but not limited to: (2) Enhancing the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources

[29] Order No. 826; *Residents Opposed to Kittitas Turbines,* above, p. 8; Order 831, following remand and review. Unlike a neighborhood or a town seeking an interrelated design emphasis, or heritage sites such as national parks or forests that are relatively consistent in their function and purpose there is no cohesive milieu into which Council-jurisdictional projects may be sited, so a single standard based on common principles is impossible to identify.

[30] Order No. 843, pages 16-19.

provides a range of analytical methodologies for scenic management that employ somewhat consistent principles of line, form and texture, interpreted by witnesses with identifiable perspectives. The reasoned application of an appropriate methodology is within our responsibility as a Council. We find no barrier to resolving the issue in this Order.

b) Testimony and Argument

Two principal expert witnesses appeared. The Applicant presented Dautis Pearson, an environmental planner who has testified regarding other wind projects. He defined the visual effect of the Project as moderate to moderately high from some viewpoints based largely on the Federal Highway Service Manual guide to scenic evaluation and elements of his own judgment. He concluded that the Project would not intrude significantly into the scenic value of the Gorge.

Dean Apostol testified for the project opponents. He criticized Mr. Pearson's analysis and stated his own judgment that visibility of the proposed facility would be highly intrusive into scenic values in the Columbia Gorge. He relied largely on the Bureau of Land Management (BLM) and National Forest Service analyses.

Mr. Pearson chose the highway manual as his principal reference in part because its analysis is applicable in any setting, developed or undeveloped. This contrasts with typical situations anticipated in the BLM (for public lands such as national parks) and National Forest Service (for national forest lands) manuals supporting the testimony of Mr. Apostol. Mr. Pearson observed that the scenery in the Gorge is not pristine; it includes industry, commercial forests and agriculture, residential, retail and urban uses. He found the proposed facility slightly to moderately intrusive overall and concluded that it would not constitute an undue intrusion into Gorge scenery.

Friends challenges Mr. Pearson's use of a hybrid methodology to evaluate scenic effects. We, however, find value in Mr. Pearson's presentation, which draws on three different methodologies. It follows methodologies used in prior applications although it inappropriately discounts the intrusive nature of full-tower and significant prominent-tower views on skyline views in the Columbia Gorge setting. We do not find fault with Applicant's failure to provide animated illustrations, criticized by Mr. Apostol; Council members are familiar with views including towers with generators in operation as well as towers whose blades are docked.

Mr. Pearson offered detailed and credible rebuttal testimony with criticism of Mr. Apostol's analysis and testimony. In particular, Mr. Apostol's use of Forest Service and BLM manuals is not wholly appropriate because they are aimed toward preservation of property owned by the Government that generally has not been extensively developed. In our view of the evidence, Mr. Apostol's testimony does not support barring wind turbines from the entire site.

c) Discussion

We agree with observations by Mr. Apostol as well as many public witnesses that entire wind production towers rising more than 40 stories above the skyline on a prominent ridge, with smooth modern designs contrasting markedly with rugged natural formations, would be readily noticeable and intrusive into the surrounding view. Mr. Pearson understates the visual intrusion of the most-prominent "A-string" and "C-string" towers.

On the other hand, in using visual standards designed for application to projects in national parks and forests, Mr. Apostol did not address any relationship between less-visible portions of the Project and the surroundings. Neither did he account for the present state of commercial and industrial development existing within and immediately outside the NSA boundaries. He thus overstates the contrasts and the negative effects associated with the Project. Comments by the Forest Service and the National Park Service share this flaw and do not recognize that the site location is outside the NSA boundaries and therefore not subject to NSA standards or the related Skamania County ordinances[31] applicable to sites within the NSA.

We disagree with the idea that the visibility of a relatively small number of partially-to wholly-obscured towers from a relatively small number of viewing areas would be so contrasting and so intrusive that they must be totally forbidden.

We have reviewed the proposed site map with the hypothetical turbine locations and have compared those with the simulations presented in Ex. 8.08r. During the Council's view of the site, the Council found that the simulations accurately represent the landscapes from their viewpoints and we therefore discount Mr. Apostol's criticisms relating to photographic perspective and stitching of composite images into a panorama.

From Figure 4.2-5 in Ex. 20 and the simulations in Ex. 8.08r we are able to identify the hypothetical tower sites in the proposed corridors. We understand that tower placement in the corridors is subject to "micrositing," but the tower locations on the map and depicted in the simulations range throughout the corridors and therefore adequately represent the visibility of towers within those corridors for purpose of this exercise.

In its brief, the Applicant reiterates its earlier opposition to any change in the Project site. Friends opposes authorization of any portion of the Project.

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[31] *See,* Skamania County Code, Title 22 generally, and SCC 22.06.010; this code is applicable only to properties within the NSA.

Counsel for the Environment (CFE), in contrast, presented an opening brief with a thoughtful and balanced argument on visual impacts. He suggests, at a minimum, elimination of the lower portion of the A string (turbines A-1 through A-7), citing adverse visual effects that are noted in the record.[32] SOSA responds favorably to this proposed measure, although characterizing it in its answering brief[33] as "only a start," and urging denial of the entire A-string.

d) Conclusion

Both expert witnesses offer helpful observations about the evaluation of landscape elements. Mr. Apostol's testimony would be more on point if we were addressing a pristine area or an area totally within the boundaries of the NSA, a national park, or a national forest. The choice of reference manuals and assumptions may tend to point toward a desired result. We noted above, and Mr. Pearson's testimony recognized, that the Columbia Gorge is not a pristine area and the proposed project is *not* within the NSA. The scenic values claimed by Mr. Apostol are not pristine, but are already diminished by industrial agriculture, regional utility, commercial and industrial development and historical elements such as those we note above.

On the other hand, we reject Mr. Pearson's notion that these elements so degrade the entire scenic setting that we should all but entirely discount the aesthetic, cultural and historical significance of the Gorge and the scenic attributes that it possesses today and allow all proposed tower corridors despite the contrast and intrusion of complete towers across prominent ridgelines.

Friends is the sole party stating unwavering opposition to the proposed project on all points. It notes that the Scenic Area Act does not limit the Council's authority under other provisions of law. However, as we state above, neither does it require or permit use of its protections outside of the Scenic Area; by terms of the federal law, the scenic area standards have no application outside that area. Our decision recognizes this distinction and rests its validity on the scenic, historical and cultural values associated with the Gorge, including territory without as well as within the NSA, and not on its Scenic Act designation. Therefore, we will apply neither the NSA restrictions nor the County's NSA-based restrictions to the Project site.

Our decision is not inconsistent with that of the U. S. Forest Service in the *Northwest Motorcycle*[34] case cited by the parties. *Northwest Motorcycle* involved a challenge to a

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[32] Three of the statements recommend elimination of all towers visible from any key viewing area. Ex. 21.04 (Mr. Westberg, National Park Service), Ex. 21.05 (statement of Mr. Sleeger, U. S. Dept. of the Interior), and Ex. 21.02 (Mr. Harkenrider).

[33] p. 20.

[34] *Northwest Motorcycle Ass'n v. U.S. Dept. of Agriculture*, 18 F.3d 803 (9th Cir. 1994).

Forest Service decision to restrict off-road vehicles from certain trails in light of a studied analysis of relevant facts. The Forest Service decision was affirmed because the record showed an adverse effect of such vehicles upon a wilderness area. Here, we find an adverse effect of the original proposal upon a scenic and cultural heritage area. We also find, however, that this adverse effect can be mitigated to an acceptable degree.

We adopt the suggestion of Counsel for the Environment, supported by SOSA to eliminate the portion of the A corridor containing Turbines A-1 through A-7 from the approved siting area. In light of our site view and our analysis of tower visibility based on Fig. 4.2-5 and simulations, we also find the entire C corridor, tower locations C-1 through C-8, to be impermissibly intrusive into the scenic vista unique to the Columbia Gorge and the heritage associated with it and it is also denied. Therefore, we find this portion of the site to be unsuitable for the proposed project.

We agree with CFE's analysis of several other points supporting this measure – it will reduce impact to residences to the south and west (see also SOSA answering brief, p. 20, l. 21); it will reduce potential noise impacts (see SOSA ans. br. p. 20, ll. 2-3); and it will reduce further the possibility of geologic hazards by eliminating the use of a relatively narrow ridge with the least surface area for tower foundations of any in the Application (see SOSA ans. br. p. 21 ll. 9-13).

The following Table 1, "Viewing Site Analysis," reflects the Council's evaluation of allowable tower visibility. It is based on examination of tower views from the record (maps, simulations and testimony of expert and lay witnesses) and as verified during the view of the site from identified viewing areas. The degree of reduced visibility is not a mathematical calculation but rather the Council's subjective effort to approximate the reduced visibility obtained from tower reductions.

TABLE 1
Viewing Site Analysis

VIEW SITE	OPTION 0 (All Turbines) Resulting Visibility	OPTION 1 Turbines Reduced: A1-7 Resulting Visibility	OPTION 2 Turbines Reduced: C1-8 Resulting Visibility	SELECTED OPTION 3 Turbines Reduced: A1-7, C1-8 Resulting Visibility
1	B11-21, C1-8, D1-3, E1-2	No Change, No A-String Visible	Approximately ½ Reduction in Turbine Visibility	Approximately ½ Reduction in Turbine Visibility
2	B5-21, C1-8, D1-3, E1-2	No Change, No A-String Visible	Approximately 1/3 Reduction in Turbine Visibility	Approximately 1/3 Reduction in Turbine Visibility
3	B1-16, C1-8, D1-3, E1-2, F1-3	No Change, No A-String Visible	Approximately 1/3 Reduction in Turbine Visibility	Approximately 1/3 Reduction in Turbine Visibility
4	A1-8	Approximately Zero Turbine Visibility	No Change	Approximately Zero Turbine Visibility
5	A10-13, B1-16, F1-3	No Change	No Change	No Change
7	A1-13, B1-13, F1-3	Approximately One Third Reduction in Turbine Visibility	No Change No C-String Visible	Approximately 1/3 Reduction in Turbine Visibility
8	A1-4, C1-8	Zero A-String Turbine Visibility	Zero C-String Turbine Visibility	Zero Turbine Visibility
10	A1-7, C1-8	Zero A-String Turbine Visibility	Zero C-String Turbine Visibility	Zero Turbine Visibility
11	B9-21, C1-8, D1-3, E1-2	No Change, No A-String Visible	Approximately 1/3 Reduction in Turbine Visibility	Approximately 1/3 Reduction in Turbine Visibility
12	B13-21, C1-8, D1-3, E1-2	No Change, No A-String Visible	Approximately ¾ Reduction in Turbine Visibility	Approximately ¾ Reduction in Turbine Visibility
13	A1-5, B13-21	Approximately One Half Reduction in Turbine Visibility	No Change No C-String Visible	Approximately ½ Reduction in Turbine Visibility
14	A1-13, B1-9	Approximately One Half Reduction in Turbine Visibility	No Change No C-String Visible	Approximately ½ Reduction in Turbine Visibility
15	A1-10	Approximately ¾ Reduction in Turbine Visibility	No Change No C-String Visible	Approximately ¾ Reduction in Turbine Visibility
16	A1-8	Approximately Zero Turbine Visibility	No Change No C-String Visible	Approximately Zero Turbine Visibility
17	A3-6	Zero Turbine Visibility	No Change No C-String Visible	Zero Turbine Visibility
18	A5-7	Zero Turbine Visibility	No Change No C-String Visible	Zero Turbine Visibility
19	B16-21, C1-8, D1-3	No Change No A-String Visible	Approximately ¾ Reduction in Turbine Visibility	Approximately ¾ Reduction in Turbine Visibility
20	A1-13, F1-3	Approximately ½ Reduction in Turbine Visibility	No Change No C-String Visible	Approximately ½ Reduction in Turbine Visibility
21	A1-4	Zero Turbine Visibility	No Change No C-String Visible	Zero Turbine Visibility
22	A1-8	Zero Turbine Visibility	No Change No C-String Visible	Zero Turbine Visibility
23	A1-8	Zero Turbine Visibility	No Change No C-String Visible	Zero Turbine Visibility
	Full 50 Turbines (100%)	**43 Turbines (86% Remaining)**	**42 Turbines (84% Remaining)**	**35 Turbines (70% Remaining)**

The Council is empowered by law to consider the aesthetic aspects of projects within its jurisdiction and to consider the total and surrounding scenic and cultural heritage entirely apart from the existence of the NSA, and to apply unique limitations on proposed energy facilities. We conclude that a portion of the proposed Project's visual effect would intrude impermissibly into the heritage view and that use of portion(s) of the site for wind generation towers should not be allowed. We also conclude that other portions, as to which some of the towers and/or blades would be visible, are not impermissibly intrusive into overall viewscape or the area's heritage, and must be allowed.

Micrositing adjustments for scenic values. Counsel for the Environment called attention to Mr. Spadaro's testimony at TR. 1:148 ll. 3-7 that micrositing is an appropriate mechanism for minimizing visual impacts on sensitive resources. The Site Certification Agreement will require Applicant to prepare approval a micrositing plan that minimizes visual impacts from the Project on sensitive resources (viewing areas identified in this record plus Mitchell Point).[35]

2. WILDLIFE AND HABITAT

Introduction

Questions involving habitat and wildlife form the second-largest cluster of issues presented by the parties. Counsel for the Environment and Audubon Society identify concerns and suggest remediation; Friends and SOSA challenge numerous points.

WDFW has indicated that this project, with the appropriate mitigation measures, is consistent with WDFW 2009 Guidelines for Wind Power Projects (Ex. 609c). CFE observes that this is the first wind project in a conifer forest in the western United States on land currently managed as a commercial forest. The WDFW 2009 Guidelines for Wind Power Projects (Ex. 609c) recommend that the projects should be sited on highly disturbed and roaded areas with existing transmission lines. (pp. 5 & 8 of Ex. 609c). The Whistling Ridge Project is consistent with that approach since it occurs on a tract of industrial timberland that has been heavily disturbed for many decades and has an extensive road system and an existing transmission line bisecting the project.

It has been established that there is a need to acquire information on this Project if it is built and operated because of its potential usefulness to the Council, operators, applicants, landowners, and interests such as DNR, Audubon, and WDFW in the future siting and operations of wind projects in forest environments. Therefore, we do support taking the opportunity to establish pre- and post-construction studies and reporting

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[35] We understand that topography will restrict views from Mitchell Point and that elimination of the C and lower A corridors may eliminate all tower visibility from that point. However, as no simulations were provided to demonstrate likely visibility, we include the site as a referenced viewing point for review.

requirements that will enable ongoing adjustments to continue to reduce adverse environmental consequences.

a) Avian Issues

As CFE notes, more than 90 species of birds (a majority associated with forests) have been observed on the site, including several sensitive species. Sensitive species identified on or near the site include northern spotted owl, northern goshawk, olive sided flycatcher, Vaux's swift, pileated woodpecker, keens myotis (bat), Townsends big ear bat, bald eagle, golden eagle, and the western gray squirrel. Audubon, CFE and Opponents state concerns about or challenge the adequacy of the studies presented in the application.

Protected species do not appear, on the basis of the record of this adjudicative proceeding, to be an issue. Considering the totality of information on the record, we conclude that there is a low risk to critical habitat for state or federally listed species and a low likelihood of state or federally listed species being killed by a turbine collision. Available information indicates that a single male northern spotted owl was seen outside the Project area but not within it. The area theoretically affected, within the species typical breeding range, has recently been logged and is not its typical breeding habitat.

We reject Friends' contention that the Applicant's avian studies were "wrong or missing on every measure." Particularly given the relatively unique nature of the surrounding habitat as a potential wind farm site, an abundance survey and a literature review (noted by Audubon) may have been helpful. Their importance is not critical and their absence is not fatal, however.

WDFW noted in Ex. 1.20r that Applicant's studies meet the WDFW Wind Power Guidelines. Among other things, WDFW observes that avian use and mortality is accepted as reasonably consistent across habitat types and locations, and the use of a population estimator is recognized and accepted. While not negating some possible additional value of efforts to increase available information, we accept the studies as satisfying our requirement.

Mr. Smallwood's testimony for opponents urges rejection of WDFW guidelines. The guidelines incorporate the point of view of a broad range of stakeholders, including several participants from Washington State and Seattle Audubon and The Nature Conservancy, which allows consideration of the collective wisdom of all the experts who participated in their development. They are accepted statewide as appropriate and are identified in our rules as proper authority for application presentations. WAC 463-60-332. No standard might receive universal acclaim, but we are satisfied that the WDFW guidelines have sufficient credibility and authority that Mr. Smallwood's criticisms are rejected. Applicant's experts Reams and Johnson recognized and, as pertinent, followed the guidelines. They presented credible testimony regarding their work and the Project's compliance.

Audubon urges additional preconstruction study if the Application is approved. In lieu of that, particularly given WDFW's acceptance of the existing analysis, the Council

believes that there is a more productive approach. The SCA instead will require additional post-construction monitoring for avian impacts, including three years' post-construction monitoring for avian impacts. Doing so satisfies another request of both CFE and Audubon and could avoid or reduce avian mortality by observing patterns of injury, to control operations of individual towers or develop other means to minimize adverse impacts to avian species. We identify appropriate mitigation measures below for inclusion in the SCA. The SCA will, as noted elsewhere, also include requirements based on the Final Environmental Impact Statement.

b) Bat Issues

Bat species of concern have been observed on site, although species identification may be incomplete. Concerns regarding bats parallel those regarding birds. Both rely on flight for principal mobility and both may collide with rotor blades or be caught in pressure changes in the vortex of revolving rotors.

Additional study appears to be appropriate for bats as well as birds. The Council will incorporate a condition in the Site Certification Agreement to require such appropriate studies and consideration of corrective measures identified in those studies. In addition, the mitigation measures identified below will provide protections aimed at specific points addressed in the hearing record.

c) Mitigation Measures

The Council provides mitigation measures through specific one-time requirements, long-term obligations, and ongoing study aimed at providing continuing improvement. Counsel for the Environment proposed several potential SCA requirements. We agree that the following measures are appropriate and intend to incorporate them into the Recommendation and the Site Certification Agreement. Measures iii through viii are described in the WDFW Guidelines and the US Fish and Wildlife Service Avian Protection Plan Guidelines.

i. Compliance with 2009 WDFW guidelines (Ex. 609c). WAC 463-60-332.

ii. Creation of a Technical Advisory Committee (TAC) to suggest and review studies and to make recommendations based on the studies regarding steps that may be recommended to EFSEC if the TAC deems additional studies or mitigation necessary to address impacts that were either not foreseen in the Application or the EIS, and to accept a representative of Seattle Audubon Society as a member of the TAC. Other members shall include the certificate holder, EFSEC Staff, WDFW, USFWS, Department of Natural Resources, Skamania County and the Yakama Nation and additional representatives to be identified at the Council's discretion.

iii. Conduct post-construction mortality studies to increase understanding of at-risk species and to pursue and recommend suggestions to reduce avian and bat mortality.

iv. Use of adaptive management strategies to optimize the balance between measures that work and effective operation of the facility.

v. Public availability of reports and study results.

vi. Low-impact lighting to reduce the attraction of insects and consequently insect-feeding species.

vii. Mitigation through micrositing; avoid as practical turbine locations that separate nesting areas from food gathering areas; avoid flight paths; consider other factors as identified by the TAC. Mitigation as well from study of post-construction surveys.

viii. Development and compliance with best management practices, including the possibility of minimizing operations such as low rotor speed that may present greater hazards to some species.

For reasons noted above, we decline to require pre-construction studies as additional mitigation measures.

d) Mitigation Parcel

A suggested mitigation parcel may satisfy applicable mitigation standards in as much as it provides a habitat superior to a commercial forest habitat. This mitigation parcel was discussed extensively in the Adjudicative proceedings, but it has yet to be offered as a formal mitigation plan. Due to that fact, this Order does not address the mitigation parcel in the findings of Fact & Law.

e) Conclusion

We find support for the application adequate as it pertains to habitat and wildlife, subject to development of and compliance with elements of a Site Certification Agreement incorporating the protections identified above and others that may be suggested through review of the FEIS. We have considered the criticisms and counter-suggestions of the opponents and determine that they should be rejected. We are persuaded to support performance analysis of wind farm impacts in forest environment if the project is on heavily disturbed, highly roaded forest lands with existing transmission infrastructure such as presented here. (see Ex 609c,pp 5 & 8). We do not find support in the record for the assumption that forestlands are by definition more worthy of protection than the shrub steppe lands in Eastern Washington.

3. NOISE ISSUES

The Council's regulations require compliance with the maximum noise limits set forth in regulations promulgated by the Department of Ecology.[36] The evidence demonstrates that the noise created by Project operation would fall beneath those limits under normal operating conditions. Any noise exceeding applicable state standards (which are measured at the property line of the affected use) will constitute a violation. Neither the Council nor the Department of Ecology regulate on the basis of ambient noise. The results of predictive modeling (Ex. 7) indicate reliably, considering the laws of physics and Mr. Storm's testimony (which we find credible), that the Project will comply with applicable noise limits. The Site Certification Agreement will, and the regulations do, require compliance with regulatory noise limits and the Council will enforce compliance.

4. GEOLOGY

The Applicant presented witness Dan Meier, a licensed engineering geologist. He testified (Ex. 3) that he had reviewed available information and literature and had visited the site. He stated his opinion that it would be geologically suitable for wind facility construction and operation. Opponents challenged this evaluation, urging that the witness spent less than one day at the site and failed to drill test bores or undertake other verifications at points of tower construction.

The challenge is not well taken. The task at this stage is not to complete pre-construction site preparation following warning signs that there are geological problems, but to assess the structural stability of the corridors for future site-specific determinations. The witness, a professional engineering geologist, presented credible testimony supplementing the Application, in which he described the geology of the site based on researching available literature and visiting the site. The study was not exhaustive, but did provide adequate information to meet the requirements of WAC 463-60-302. No known earthquake faults cross the site. No Class I (severe) or II (high) landslide hazard areas are known to exist at the site. Class III landslide areas are present on the site, but the designation of low potential hazard is assigned only because of the degree of slope and not because of geological evidence of actual prior or potential future hazard. That issue appears moot, however, because of our decision to reject a portion of the Project for other reasons. Tower foundations will be solidly constructed to anchor the towers, at sites chosen after micrositing review of their geological stability.

No evidence of record supports a finding of instability of the proposed corridor sites. The Site Certification Agreement will establish specific, appropriate pre-construction and construction requirements relating to site exploration and preparation.

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[36] WAC 463-62-030 (referencing WAC 173-60). The standard is stated in WAC 173-60-030 and -040.

5. ROADS AND TRANSPORTATION

a) Public Roads:

The public roads necessary for site access by workers, materials and turbine/tower parts received considerable attention during the hearing. Skamania's county engineer, Mr. Homann, testified that the roads could bear loads of the height and weight required without modification, and that loads up to 150 feet in length could be accommodated without modification. During the hearing, the Applicant indicated that turbine blades up to 164 feet in length might be required, and the Applicant agreed to file a subsequent exhibit with information about the public roads' ability to accommodate the loads between 150 and 164 feet long. TR III:505. The record does not show that this was later addressed. The Site Certification Agreement will specify that transportation must be lawfully accomplished according to the applicable standards current at the time of transportation. To the extent that long, wide and/or overweight loads are involved, permits must be obtained and their terms complied with. If the road capacity prohibits transportation of the longloads on the public roads, the Applicant may choose a shorter component, choose an alternative delivery method or forego construction.

Some public witnesses expressed concern over possible periodic traffic blockages during construction when long, wide or overweight loads are transported to or from the site. There is no evidence of record identifying such delays, only that mitigation would limit any traffic delays to 20 minutes. The duration of such blockages, therefore, is estimated to be measured in minutes or seconds (*see*, Ex. 20, p. I-11); the result will not substantially impede traffic.

An SCA condition will require coordination with emergency providers and public notice, and that timing of transportation avoid or be coordinated with commuter, school bus or other traffic. In addition, a traffic management plan, traffic control plan, and signing plan will be required by the County to satisfy its requirements.

b) Internal Access Roads

The Project expects to have approximately 7.9 miles of internal access roads,[37] allowing construction and maintenance vehicles to travel to each Project turbine. The SCA will require that Applicant minimize new road construction to avoid unnecessary impacts to habitat and disturbance of soil and will be required to comply with Washington Forest Practices road standards of the Department of Natural Resources (DNR) and water quality standards of the Department of Ecology.

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[37] Ex. 20, p. I-10; reductions proposed in other portions of this order will reduce the total area.

6. CULTURAL AND ARCHCAEOLOGICAL

The prefiled testimony of Sarah McDaniel, archaeologist, was admitted without objection as Ex. 10. Ms. McDaniel's testimony states that no known significant cultural or archaeological sites are known to exist within the bounds of the Project. The Washington State Department of Archaeology and Historic Preservation (DAHP) concurs (Ex. 10.02). The Applicant will address cultural resources in the final design and micro-siting process. It has committed to work with the DAHP and Native American tribal authorities to identify, preserve, and as necessary mitigate, culturally significant sites. Applicant will be required to halt relevant construction if any artifacts are discovered. An SCA provision will specify processes to work with DAHP, Yakama Nation and other Native American tribal authorities to identify, preserve, and as necessary mitigate, culturally significant sites.

The Council finds that with implementation of appropriate mitigation measures in the SCA, no impacts on known culturally sensitive areas will occur due to construction or operation of the Project WAC 463-60-362(5).

7. HEALTH AND SAFETY

The Applicant must prepare Health and Safety, and emergency plans for both construction and operation phases to protect public health, safety and the environment on and off the site. WAC 463-60-085; *see also, WAC* 463-60-265 and -352. The plans must anticipate a comprehensive list of major natural disasters or other incidents that could relate to or affect the proposed Project. The Applicant will be responsible for implementing the plans in coordination with the local emergency response organizations. The Project operating and maintenance group and all contractors must receive emergency response training as part of the regular safety-training program to ensure that effective and safe response actions would be taken to reduce and limit the impact of emergencies at the Project site. With appropriate provisions in the SCA, health and safety concerns will be adequately addressed.

WASHINGTON FOREST PRACTICES ACT Under RCW 80.50.110, the Council takes jurisdiction over requirements of the Forest Practices Act (FPA), RCW 76.09, once a Project is approved and an SCA is signed. The SCA will contain pertinent provisions to ensure compliance. The Council retains the Department of Natural Resources (DNR) as a subcontractor to assist the Council in ensuring that a Project meets all applicable requirements of the FPA.

8. SOCIOECONOMICS

The Project will result in increased employment in Skamania County, both during construction and, to a lesser extent, during operation. The Project's economic impacts are not expected to be limited to jobs and the salaries of employees. The Project will purchase goods and services, some of them in Skamania and neighboring counties. The Project will increase the total valuation of real property in Skamania County and substantially increase

tax revenues. The resulting revenues will be available for the support of schools and local public services in the area, including county roads and county government. WAC 463-60-535.

Opponents challenged the asserted degree of economic need in the county and the degree of potential benefit from the project. The record is clear that such need exists and that Skamania County is uniquely challenged financially. The economic benefits from the project will be real and, to the county, the school system and the public, not insignificant. *See,* Ex. 42 and 42.01r; Ex. 48 and 48.01; Ex. 36; Ex. 41.02. That the Project is not huge by other standards, or that other areas may also be suffering economically, do not lessen the reality of the Project's benefits.

9. SITE RESTORATION

WAC 463-72-040 requires an Applicant, prior to beginning site preparation, to provide an initial plan for site restoration in sufficient detail to identify, evaluate, and resolve all anticipated major environmental, public health, and safety issues. The rule requires that this plan address provisions for funding or bonding arrangements to meet the site restoration and management costs. The Application outlines the scope of activities that would be undertaken at the end of the Project's useful life. Ex. 20, Sec. 2.3.7. These activities include removal of Project structures, removal of foundations to four feet below grade, and restoration of soil surfaces as close as reasonably possible to their original condition. The Applicant has committed to posting funds or guarantees sufficient for decommissioning, to ensure the availability of decommissioning funds when needed.

The Council has considered the Applicant's commitments and finds them to be appropriate. The SCA will require Applicant to provide an initial site restoration plan to the Council prior to construction of the Project, and a detailed site restoration plan must be approved by the Council prior to decommissioning at the end of the useful life of the Project.

10. FIRE HAZARDS

Given the forested nature of the site, adequate fire protection is a necessity. Although evidence in the record appears to indicate that wind turbines rarely cause fires and would be unlikely to affect (or be affected by) a fire started by some other cause, fires could be started by turbine or other activities on the site. Fires originating off-site could spread onto the site. In either event, emergency response would be required on-site. The SCA will require fire prevention and response plans as a condition of construction and operation.

11. PROJECT CONSTRUCTION

The Council finds that there is a benefit to the public to have permitted facilities ready to be constructed whenever it becomes known that more generation capacity is

needed. This project also requires construction of a power substation before it will have access to the grid for power sales.

The Applicant proposes to construct the Project in the manner set out in the Application and the Agreements. Ex. 20. Its application suggests a 19-month period after application approval for site-specific design and for construction, but commits to providing a schedule following gubernatorial approval. Ex. 20, Sec. 2.12. 2. The Council recognizes that there may be remaining uncertainty regarding approval and construction of the proposed substation, which could delay the start of construction.

In any event, an unlimited "build window" for a proposed project is not appropriate as, over time, technology or mitigation measures presented in an application may no longer be protective of environmental standards and conditions at the time the facility is constructed. Therefore, we set a five-year window for substantial completion following gubernatorial approval. The Applicant may seek one additional five-year extension.

The Applicant is not restricted from operating and generating power from individual strings of turbines that are completed prior to others, so long as all needed infrastructure, safety and mitigation measures are in place. These measures provide flexibility for construction but also address needs to complete the project in a timely manner.

12. PROJECT BENEFITS

The environmental benefits of this project include generation of energy from a source that does not produce carbon dioxide emissions. RCW 19.285. Economic benefits also result, as the Project will provide construction jobs, employment during operation, tax revenues to local governments, and payments to landowners and service providers. The available generation will have economic value. Ex. 41, Ms. Bryan-Miller; Ex. 48, Mr. Canon; Ex. 51, Mr. Pytel.

E. CONCLUSION ON ADJUDICATIVE ISSUES

The Council carefully considers its statutory duties, applicable administrative rules, and all of the evidence in the record in exercising its duty to balance the state's need for energy at a reasonable cost with the need to protect the environment and the health and safety of the residents of the local area.

One of the Council's principal duties is to ensure that the location of energy facilities will produce minimal adverse effects on the environment. We have considered the exhibits of record and the testimony of numerous expert witnesses and members of the public in determining whether this Project, with its proposed mitigation measures, is appropriate for this location. As a result of this review, the Council has rejected turbine locations that are prominently visible from numerous viewing sites within the Columbia Gorge. The remaining towers for the most part are only partially visible, and from fewer locations.

Our disapproval of proposed turbine strings preserves the Applicant's ability to achieve the generation capacity it requests while substantially reducing the project's visual impacts from the Gorge, including the NSA.

The record before us, including elements in the Application (Ex. 20) that received no cross examination, supports decision to recommend approval of the project, subject to the restrictions on tower locations and the other mitigations and protective measures identified in this order. Review of the Final Environmental Impact Statement may alter the result of our adjudicative review, as noted earlier in this Order. However, we determine on the record in this proceeding that including these elements in a Site Certification Agreement will adequately protect the public, including members of the public who reside in and use the areas surrounding the Project.

As currently proposed, with mitigation for a number of impacts and the conditions identified for inclusion in a Site Certification Agreement, consistent with applicable laws and rules, the Project will have a minimal impact on the environment.

The Council considered whether the total package of mitigation measures offset the environmental impacts of the Project. Viewed on balance, with respect to this Project, and in the context of mitigation proposed, the package for the Whistling Ridge Project satisfies the legislative policy of RCW 80.50.

For all of the reasons discussed in the body of this Order, the Council finds that this Project may properly be recommended for approval, based on the adjudicative record. The result of this order is subject to a review of the Final Environmental Impact Statement and, if approval is recommended, development of a Site Certification Agreement consistent with the provisions of this Order and such other measures as the Council may identify from its review of the Final Environmental Impact Statement.

IV. FINDINGS OF FACT and CONCLUSIONS OF LAW

Note: *the Council intersperses conclusions of law with its findings of fact for the convenience of the reader. Any finding in the nature of a conclusion of law should be interpreted as a conclusion, and any conclusion in the nature of a finding should be interpreted as a finding of fact.*

Nature of the Proceeding

1. This proceeding involves Application No. 2009-01 before the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Whistling Ridge Energy Project (also "Project" in this order). The Project is a wind-powered electrical energy generation facility with a maximum of 50 wind turbines and a maximum installed nameplate capacity of 75

megawatts (MW). The Project is to be located north of the community of Underwood, Skamania County, Washington.

The Applicant and the Application

2. The Applicant is Whistling Ridge Energy Project LLC. It is a Washington limited liability corporation formed to develop, permit, finance, construct, own and operate the Project. Applicant is in turn owned by S.D.S. Co., LLC. Both entities, and their successors, will be defined as Site Certificate Holders as defined in the Site Certificate Agreement (the Certificate or "SCA".)

3. The Skamania County Commission adopted a zoning code amendment that would have allowed wind powered generation facilities in certain county areas, including the site of the proposed Project. Opponents appealed the adoption to the Skamania County Hearing Examiner, who reversed the county in a decision February 19, 2009. The basis for the Examiner's decision was the county's failure to conduct a programmatic environmental review before adopting the zoning code amendment.

4. On March 10, 2009, Applicant submitted an Application for Site Certification Agreement to EFSEC, seeking authority to construct and operate the Project. It submitted a Revised Application, on October 10, 2009.

Compliance with the State Environmental Policy Act (SEPA)

5. EFSEC is the lead agency for environmental review of project proposals within its jurisdiction under terms of the State Environmental Policy Act, RCW 43.21C. The Council Manager is the SEPA responsible official. WAC 463-47-051.

6. An electrical substation would be required to convert power from the Project to the voltage necessary for inclusion into a transmission line. The Bonneville Power Administration ("BPA"), a federal agency, agreed to provide such a substation. Its construction would require an environmental review under the National Environmental Policy Act ("NEPA").

7. BPA and the Council agreed to prepare a joint federal-state environmental statement to satisfy the requirements of both laws. EFSEC will use the documentation for purposes of SEPA and BPA will use it for purposes of NEPA.

8. A draft environmental impact statement (DEIS) was circulated for public review on May 21, 2010. Numerous comments were received. They were made available to Council members and were publicly available on September 16, 2010. The Responsible Official issued the Final EIS on August 12, 2011. This order does not consider the results of the SEPA FEIS. The SEPA results are incorporated into a Recommendation order and a proposed Site Certification Agreement, which three

documents, together with this Order, will constitute the Recommendation to the Governor under RCW 80.50.100.

Compliance with Procedural Requirements

9. The Council published and, when required by law or rule, served notices of events in the application process, including receipt of the Application, public meetings, commencement of the Adjudicative Proceeding and opportunity to file petitions for intervention, prehearing conferences, land use hearings, and the adjudicative hearing sessions regarding Application No. 2009-01.

10. The Council afforded the parties to the adjudication the opportunity to present oral and written evidence, object to evidence, and fully brief issues. The Council resolved procedural issues prior to hearing through orders based on numerous prehearing conferences at which parties had the opportunity to present arguments; the Council decided such matters through decisions from the bench and through procedural orders, to which parties had the opportunity to object.

11. *The Council concludes* that it has complied with applicable procedural law and regulation, including RCW 80.50, RCW 34.05, WAC 463-26 and WAC 463-30 in conducting the Adjudication and the land use consistency inquiry.

Land Use Consistency

12. The Council conducted a Land Use Hearing under RCW 80.50.090, WAC463-26-050 on May 9, 2009 in Underwood, Washington. Sixteen persons appeared and, under oath, presented facts and legal argument to the Council on the issue of land use consistency. Applicant presented a certificate of land use consistency from Skamania County. Applicant submitted a revised certificate of land use consistency on December 22, 2009.

13. Completion of the land use consistency proceeding was incorporated into the adjudicative hearing on the merits without objection by the parties. Further evidence was there received regarding land use consistency, including the revised certificate of consistency and the testimony of witnesses Spadaro, Chaney and Skamania County Commissioner Paul Pearce. The parties briefed land use consistency issues separately from other issues.

14. The zone in which turbine locations A-1 through A-7 are depicted is Skamania's FOR/AG20 zone, in which semi-public uses are permitted; uses such as a privately-owned logging railroad have been found to be semi-public and uses including aircraft landing facilities and surface mines are permitted of right or conditionally. The remainder of the proposed project is within the county's "Unmapped" area, in which any use is permitted that has not been found a nuisance by a court with jurisdiction over the site.

15. The stated purpose of the applicable conservancy designation of the comprehensive plan is to "conserve and manage existing natural resources in order to maintain a sustained resource yield and/or utilization." Allowing wind generation facilities within the designation will assist in conserving and managing commercial timber harvests by adding diversity of consistent uses to land used for commercial forestry.

16. *The Council concludes* that

    a. Zoning code provisions are regulatory in nature and RCW 80.50 requires compliance. A comprehensive plan is a guide for future action, not a regulation requiring compliance, RCW 36.70.340; RCW 80.50 requires consistency.

    b. A certificate of land use consistency is *prima facie* evidence that the use is consistent and in compliance with local land use provisions. WAC 463-26-090.

    c. The Project complies with provisions of the Unmapped area, which permits wind generation facilities as a use that has not been found a nuisance by a court with jurisdiction. Sec. 21.64.020, Skamania County Code.

    d. The Project is consistent with the Conservancy designation of the Comprehensive Plan. The County certification is prima facie correct. The proposed use is consistent with the stated purpose of the designation as a use that provides for the management and harvest of the forces of wind, a natural resource. It is a use that assists in conserving commercial timber operations on portions of the site not used for energy production. The comprehensive plan is a guide and not a mandate. (Comprehensive Plan, Introduction, p. 7) The specific illustrative uses in the conservancy designation of the comprehensive plan have not been adopted in a zoning ordinance and do not regulate land use. 2007 Comprehensive Plan, Chapter 2, pp. 25, 30.

The Adjudicative Proceeding – Process

17. The Council duly noticed and conducted prehearing conferences and entered Prehearing Orders to govern the course of the proceeding. Statutory parties appeared and participated. The Council received petitions for intervention, which were granted, as shown in the body of this Order. The Council served and published notice of the hearing on the merits. Hearings were held on January 3-7, and 10-11 in Stevenson, Washington and January 20 in Olympia, Washington.

18. The Applicant and a majority of other parties submitted post-hearing briefs.

19. On the date shown below as the date of signing, the Council voted unanimously that the evidence and argument in this record supports approval of the Project, in part, and rejection in part, as set out herein. The Council's Order of Recommendation to the

Governor will be based upon all of the following: a) the findings, conclusions and result of this order; b) review of the Final Environmental Impact Statement and c) a Site Certification Agreement based upon this order and the FEIS.

20. *The Council concludes* that the process of this adjudicative order complies with applicable provisions of law, including RCW 80.50 and RCW 34.05.

Views and Cultural Heritage

21. The Columbia Gorge in the vicinity of the Project has significance for cultural heritage and natural beauty long predating the advent of European exploration. Portions of the Gorge to the south, east and west of the Project have been designated a National Scenic Area (NSA) by federal legislation, and are subject to restrictions on development. Portions of the Project site are visible from the NSA but the entire Project site is outside NSA boundaries.

22. Applicant's witness Dautis Pearson urged that the portions of the Project visible from the NSA or territory surrounding it would not be unduly intrusive and that no aesthetic restrictions should apply. Opponents' witness Dean Apostol urged that the Project would have a severe impact on view, would irreparably damage the values of the NSA and should be judged by standards generally used for heritage sites with little development. The Council finds that Mr. Apostol overstated the natural conditions within the Gorge and the NSA while Mr. Pearson inappropriately discounted those factors.

23. *The Council concludes* that it has the authority to consider aesthetics and cultural heritage in its adjudicative proceeding. WAC 463-62 contains no provision barring that consideration. RCW 80.50.010(2) lists aesthetics and recreation as principal values to be advanced or preserved in implementation of the chapter. RCW 80.50.040(8) states our responsibility to develop *site-specific* criteria for approval. RCW 80.50.110 declares the chapter's preemptive power over inconsistent laws and rules. The Council has implemented viewscape restrictions in application 2006-02 of Desert Claim Wind Power LLC, as well as in Application 2003-1 of Sagebrush Power Partners LLC for Kittitas Valley Wind Power Project, the latter decision affirmed in *Residents Opposed to Kittitas Turbines,* cited above.

24. *The Council concludes* that the aesthetic and cultural values of the Gorge, irrespective of its designation as a NSA, require protection from pronounced visual intrusion, but do not require exclusion of the entire Project. Removing towers from corridors in which they would be prominently visible from numerous key viewing areas within and near the Gorge will adequately protect the scenic and cultural heritage of the Gorge. While remaining towers may be partially visible from some viewing areas, and significantly visible from a small number of locations, the substantially reduced overall visibility does not constitute an undue distraction from or to the aesthetic and cultural values of the Gorge.

Wildlife and Habitat

25. The Project is among the first four wind energy generation projects to be seriously proposed in a Northwest forest habitat. Ex. 6.04r, p. 33. The site is habitat for more than 90 species of birds, including sensitive species, and to bats.

26. Applicant's wildlife studies comply with the requirements of the WDFW Guidelines and WAC 463-60-362, Ex. 1.04r. Other parties urged additional measures that add little additional protection, and failed to discredit the validity of studies used in the application.

27. Hazards to flying species (birds and bats) have been found to include striking or being struck by turbine blades and becoming disoriented or injured by the vortex of moving blades. Post-construction mortality studies will provide greater benefit to wildlife preservation than preconstruction studies. Adaptive management utilized through a Technical Advisory Committee will provide benefit by bringing appropriate interests and skills to studies and development of remedial measures.

28. Micrositing prior to tower construction, considering avian and bat flight patterns as well as feeding and nesting areas will be required to optimize tower locations to minimize injuries to flying creatures.

29. *The council concludes* that establishing a Technical Advisory Committee (TAC) and implementation of WDFW guidelines for wind power projects should be required as conditions of operation for the Whistling Ridge project and that the mitigation parcel discussed in the record is appropriate and may be accepted.

30. The Council further concludes that, within the constraints of the information in Adjudicative record, the wildlife and habitat mitigation measures recommended herein, will result in no significant unavoidable adverse impacts to wildlife. WAC 463-62-040.

Noise

31. The Project will comply with WAC 463-62-030 and thereby with Washington State noise standards including WAC 173-60-040.

32. *The Council concludes* that the Application meets applicable noise requirements. The SCA will require compliance with Washington State noise standards and correction of any conditions resulting in noncompliance.

Geology

33. The Applicant's geological presentation is adequate for preconstruction review. There is no evidence of record indicating that actual geological hazards exist that might preclude siting of the Whistling Ridge Project as applied for.

34. *The Council concludes* that the Application satisfies requirements for geological detail. The SCA should require appropriate preconstruction investigation of selected tower locations. The Applicant should be required to report to the Council any indications of hazards that appear in such investigation or during construction and propose appropriate location change or construction measures, subject to Council approval, to ensure safety at the site and potential downslope hazard areas.

Roads and Transportation

35. Construction of the Project will require transportation of tower segments and blades that exceed standards for transportation over public roads. To the extent required, by law and conditions of the SCA, Applicant will obtain or ensure that its transportation services obtain all required overweight, over-height or over-length transportation permits for public road transportation. Local access roads are capable of handling loads up to 150 feet in length and may be capable of transporting loads up to 164 feet in length.

36. Transportation of Project components over public local access roads may result in temporary blockages. Timing of such deliveries will not create more than temporary minor inconveniences. Prior to beginning construction, Applicant must prepare and present for approval contingency plans for maintaining access in the event of an unexpected circumstance blocking public road access.

37. Private roads for internal access within property owned by or under the control of Applicant or an affiliate must be improved as needed to carry required loads safely. Improvements must be accomplished by or under the control of the Applicant and subject to prior approval and supervision by officials with jurisdiction.

38. *The Council concludes* that Applicant should be required to verify carriers' possession of appropriate permits for transportation on Washington roads. Transportation on local public roads must be coordinated with appropriate local officials and must involve Applicant or county consultation with schools, emergency services, and other potentially affected interests. If components requiring loads exceeding 150 feet in length are selected, Applicant must verify that such loads may be lawfully delivered on existing roads within the National Scenic Area without road construction or improvement, or must select smaller components. Work on private roads must be completed pursuant to regulations, and under the supervision of the Council through Department of Natural Resources or other regulatory agency under contract with the Council.

Cultural and Archaeological Resources

39. The testimony within the Adjudicative Record indicates that the likelihood of Project impacts to known archaeological sites, or discovery of unidentified sites, is low. The site is in an area of historical Native American habitation, and artifacts or indication of habitation may be discovered during Project site preparation or construction.[38]

40. Appropriate provisions in the Site Certification Agreement, requiring monitoring and reporting of discoveries and cessation of construction at the site of discovery, will satisfy the requirements of the National Historic Preservation Act, 16 USC 470.

Forest Practices Act

41. Upon implementation of a site certification agreement, the Council becomes responsible through its agent, the Department of Natural Resources to ensure Applicant's compliance with the requirements of the Forest Practices Act (FPA), RCW 76.09. RCW 80.50.110.

42. *The Council concludes* that the SCA should provide specific requirements that operations on site be required to comply with pertinent provisions of the FPA.

43. *The Council concludes* that the SCA should provide specific requirements that operations on site be required to comply with pertinent provisions of the FPA.

Socioeconomics

44. The Project will provide a benefit to Skamania County through property and other tax payments and through employment during construction and operation. Workers are expected to live within Skamania County or to commute to the job from outside the county; workers will make some purchases in the county. Through taxes and employment, the Project will benefit the county and residents of the county. RCW 80.50.010 ; WAC 463-60-535.

Site Restoration

45. The Applicant's proposal for site restoration and funding as set out in Ex. 20 is adequate. The Site Certification Agreement will require preparation of a detailed plan, and performance pursuant to the plan. *The Council concludes* that this will be adequate to protect the public and other interests potentially affected. RCW 80.50.100(1).

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[38] Depending on the outcome of Council deliberations elsewhere in this Order, some or all of the archaeological sites of concern may no longer be subject to disturbances of this project.

Fire Hazards and Control

46. The applicant will be required to prepare a Fire Protection and Response Plan in coordination with the appropriate fire response agency or agencies prior to beginning construction. The plan is subject to approval by the Council. *The Council concludes* that this will be adequate to protect the public and other interests potentially affected. WAC 463-60-535 ((4)(a)).

Project Benefits

47. Project benefits include the production of energy through means not creating carbon dioxide or other greenhouse gases as well as the economic benefits of construction activities and the energy produced.

Considering the entire adjudicative record, including the summary findings and conclusions listed above, the Council finds and concludes that the Application, with the modifications specified above, may be forwarded to the Governor of the State of Washington with a recommendation that the Application may be granted, subject to modifications and conditions noted herein and as identified in the Council's review of the Final Environmental Impact Statement and the Council's determination in the Order of Recommendation.

V. ORDER

The Council hereby Orders that the Application for the portion of the Project site located adjacent and to the south of the Bonneville Power Administration North Bonneville - Midway transmission line corridor (Tower string A-1 through A-7) be denied, and that the portion of the Project identified as Corridor C (Tower string C-1 through C-8) be denied. The Council hereby Orders that the Adjudicative record in other respects supports a grant of authority, subject to implementation of the environmental requirements of this order and subject to supplement or modification in the Recommendation to the Governor based on the Council's review of the Final Environmental Impact Statement and development of a proposed Site Certification Agreement for the Project.

DATED and effective at Stevenson, Washington, this sixth day of October, 2011

James O. Luce, Chair[39]

Richard Fryhling,
Department of Commerce

Hedia Adelsman,
Department of Ecology

Jeff Tayer,
Department of Fish and Wildlife

Andrew Hayes,
Department of Natural Resources

Dennis Moss,
Utilities and Transportation Commission

Doug Sutherland,
Skamania County

[39] Council Chair Luce also presents a concurring opinion, attached to this order and an integral part hereof.

NOTICE TO PARTIES: Administrative relief may be available through a petition for reconsideration, filed within 20 days of the service of the Orders within the Recommendation Package to the Governor. If any such petition for reconsideration is filed, the deadline for answers is 14 days after the date of service of each such petition. Since all Orders contained within the Recommendation Package to the Governor are integral components of the recommendation and served as a package to the parties, the Council requires any request(s) for reconsideration to be filed on the full Recommendation Package, and not on individual elements of the package. The formatting of the petitions shall be governed by WAC 463-30-120 and shall be limited to 50 pages.

CONCURRING OPINION OF CHAIRMAN JAMES LUCE

September 14, 2011

For reasons explained below, I concur with the Council's recommendation.

This case is a microcosm of how well-intentioned, incrementally developed, Federal and State law can have significant, unintended consequences for both our existing energy system and our environment.

Because these are important subjects with far reaching consequences beyond this case, I take judicial liberty to comment on actions that I believe could better serve to protect this system and the environment. My comments are drawn from a lifetime of public service in the energy area, first as senior counsel for the Bonneville Power Administration and for the past ten years as Council Chair. And they bear directly upon our Council's future, and the region's need to better plan for a renewable resource future.

What is needed is a new commitment; a commitment that will allow us to thoughtfully plan where renewable resources should be developed, and where they should not, and to provide expeditious siting with clear and uniform standards across all political subdivisions.

At the outset, all will agree that we seek low cost, abundant, and clean energy. It is good for our economy and for our environment. Our goal should be to protect what we have, and to get more of it.

Energy efficiency is low cost, abundant, and clean, and testimony confirms that eighty five percent of our needs can be met with energy efficiency.[i] Certainly that is consistent with our goal. And we are also in a "surplus" condition. Nothing could be lower cost than having "a surplus." [ii] But energy efficiency is finite, and surplus does not last forever.

We are now in a time of transition; transitioning to a future of renewable resources, in this case wind power. And transition presents both opportunities and challenges.

Wind power has much to commend it. There are no fuel costs, and no air emissions. And it furthers our state's energy policy, with which the Council is committed to act consistently. Wind projects, nevertheless, present challenges. They can cause avian mortality, impact wildlife habitat, leave a long lasting footprint on the landscape, in this case the Columbia River Gorge,[iii] and complicate the operation of our most valuable, and already existing renewable resource, the Federal Columbia River Hydro System.[iv]

Turning to the instant case, the Council is challenged by the fact that it has no rules for siting renewable resources.[v] This fact, coupled with our requirement to provide an adjudicatory hearing, [vi] has, in my opinion, contributed to an unnecessarily lengthy and costly proceeding where a comprehensive Environmental Impact Statement might well have sufficed.[vii]

For guidance, we look to our previous decisions, organic statutes and regulations developed primarily for thermal projects. [viii] And we use our best judgment to "balance" competing considerations. Our laws and regulations presuppose a compelling need for energy resources, tempered by a requirement that the resource enhance the esthetic and recreational opportunities available to the public while providing abundant power at reasonable cost.[ix] All of this is to be done "in the public interest."[x] And yet what is "the public interest?" Absent rules, the Council proceeds on a case-by-case basis and our decisions inevitably leave room for questioning whether the correct result was reached.[xi]

Whistling Ridge is just such a case. The Council recommends approval of 35 wind turbines just outside the boundaries of the Columbia Gorge National Scenic Act (NSA). The NSA is one of only two such "National Scenic Areas" authorized by Congress;[xii] its relevance to this case speaking primarily to the fact that the Gorge is recognized as an environmental wonder. [xiii] The applicant is a well-respected steward of the land, seeking to diversify its business and provide employment to

the community. Skamania County will benefit from increased tax revenues, as much as $700,000 yearly.[xiv] These are legitimate and reasonable aspirations.

On the other hand, tens of thousands visit the Gorge yearly to recreate and enjoy the beauty of a natural landscape, a landscape also treasured by many who live in the area and oppose this project. Wind turbines are not part of the natural landscape. That landscape will now be altered during the day by 430 foot towers,[xv] and by night with warning lights required by the Federal Aviation Administration. How many visitors will be dissuaded from coming if this project is built, or how many may now be attracted by it, is unknown. Some local residents may chose to relocate, while others may welcome positive economic benefits. But there is no question that there will be a significant impact in this environmentally sensitive area, especially to its unparalleled viewscapes and possibly to its avian and other wildlife populations.

As concerns the Council's "balancing directive," I cannot say that this project "enhance [s} ... esthetic and recreational opportunities...." It is, as modified by the Council's Order, at best arguably neutral in this regard. And, as earlier noted, the Legislature's directive to the Council to assure "abundant power at reasonable cost" seems somewhat less forceful when the region has an existing surplus. However, the economics of a particular project are not an appropriate subject for Council inquiry and, for reasons explained below, the "esthetics' issue is not determinative .

Nor is it the Council's role to say to the developer "find a different site" or "start an energy efficiency business." We are a siting Council, charged by law with the responsibility to act on the application before us.

So considered, the Council's recommendation reduces or eliminates viewscape impact from the vast majority of important viewing areas within the NSA. It is consistent with and in some respects exceeds the Council for the Environment's recommendations. Moreover, there is no assurance that these protections would occur if the project were sited locally, and Skamania County has asked the

Governor, acting through the Council, to make the decision. Finally, the project furthers our state's strong policy and legal commitment to renewable resources, which in turn reduces our carbon footprint. These factors, for me, support a recommendation of approval.

As for the future, and as noted above, there are critical issues regarding the Council's role and the region's ability to effectively plan for continued renewable resource development.

First, as to the Council's role.

Reasonable questions can be asked regarding the Council's siting role, beginning with but not limited to renewable resources, and the requirement that the Council's public hearing be conducted as an adjudicative proceeding under the Administrative Procedure Act (APA).[xvi]

As exemplified by this case, the Council is currently little more than a renewable resource forum of "last resort."

Jurisdiction is the major issue. It is important to understand that the law does not confer jurisdiction on the Council, but on the developer. The developer can "opt in" to the EFSEC process initially, or after local jurisdictions deny siting, or project opposition materializes. A developer can even "opt in" after a Court of competent jurisdiction upholds the denial of a project by a local governing body. See Desert Claim Wind Power LLC v. Kittitas County, No. 05-2-00243-6, slip. Op at 11(Kittitas Cty Super Ct. November 4, 2005). This means that the Council reviews only a small fraction of the total number of wind projects licensed in our state.[xvii]

In practice, initial "opt in's" don't happen.[xviii] The Council is used only "if all else fails," and only then because a Council license preempts all other state and local law and provides expedited review by the Supreme Court.[xix]

Stated bluntly, the resources that currently have the greatest impact on our state's energy future and environment are, for all practical purposes, not subject to state siting review.[xx] The same is increasingly true of non-nuclear thermal resources.[xxi]

Second, as to the region's role.

Continued development of renewable resources is likely.[xxii] And as earlier noted, these projects will need to be carefully integrated into an existing resource base. So considered, a comprehensive plan would seem appropriate. Such a plan could take a programmatic approach considering reasonably foreseeable impacts associated with such development. The plan could assess renewable resource sites and prioritize their potential for development. Potential esthetic, wildlife, and cultural resource impacts, all of which may bear upon site selection, and related issues, such as the need for new transmission, could be examined.

Currently no such plan exists. Our Council lacks authority to either undertake or fund such a plan,[xxiii] and our state's Growth Management Act has not been used for this purpose. In any case, because renewable resource development is regional in scope, it would seem that a regional plan would be appropriate.

The Bonneville Power Administration (BPA) and the Northwest Power and Conservation Council (NWPCC), working in partnership, are the logical entities to undertake this task. They have regional responsibility and, as described below, they have previously developed an effective plan in an analogous situation.

BPA has the financial means and the operational interests to do this job. The renewable resource industry's growth is a significant factor in driving Bonneville's multi-billion dollar transmission program, and in addressing issues related to integrating wind projects with the existing Federal Columbia River Hydro Power System. And the NWPCC is responsible for the regional Power Plan which guides Bonneville actions.

Such a plan would "bank" potential renewable resource sites and designate "protected areas" for environmentally sensitive locations. Absent such protection, such sites are likely to be developed if the economics warrant.

A "site banking" plan successfully protected anadromous fish in the mid-1980's.[xxiv] Relying on the plan, the Council and BPA adopted "protected areas" to discourage small hydro development that threatened this resource. Developers who chose to build small hydro facilities in "protected area" streams were unable

to access BPA transmission."[xxv] Denial of transmission access because of environmental impacts is within BPA's authority.

In summary, renewable resource development is likely to continue its robust growth. The Whistling Ridge project, as modified, should be approved. The Council's siting role and the need for the adjudication process deserves discussion. And to provide a regional structure which could assist Council's such as ours in future cases, I look to those with authority to consider a "site banking" plan to designate appropriate renewable resource sites, and adoption of "protected areas" to discourage development of those not so designated. Absent such a plan, admittedly not easy and not without controversy, economic considerations will be paramount and the broader public interest in protecting the environment could finish second. This is in no one's interest, least of all renewable resource developers.

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[i] Testimony of Howard Schwartz, a senior Department of Commerce employee and energy policy analyst for the Northwest Power Planning Council, January 7, 2011, hearing transcript on pages 1025-1026 and 1044. Exhibit 35-02 from the Council's Sixth Power Plan also concludes that, "The plan finds enough conservation to be available and cost-effective to meet 85 percent of the region's load growth for the next 20 years. If developed aggressively, this conservation, combined with the regions past successful development of energy efficiency could constitute a resource comparable in size to the Northwest federal hydroelectric system..." Implicitly recognizing that it is state mandates that are the driving force behind wind projects, the Council's Program Summary continues, "Aggressive pursuit of this conservation is the primary focus of the power plan's actions for the next five years. *Combined with investments in renewable generation as required by state renewable portfolio standards..."*

[ii] Id.

[iii] The project is located in the Columbia River Gorge. The Gorge is a natural wonder created through millennium by the repeated great Glacial Lake Missoula floods beginning 12,000 years ago. It has sheltered Native American peoples, and served as the gateway to the Pacific for Lewis and Clark and homesteading pioneers. Today it is the destination for tens of thousands of visitors who hike, ski, fish and recreate within its majestic boundaries. Recognized as an environmental treasure by Congress's passage of the National Scenic Act, 16 U.S.C. 544, the Gorge in 2009 was ranked 6th internationally and 2nd in North America for sustainable destinations by the National Geographic Society's Center for Sustainable Destinations, which called it "the USA's Rhineland." http://traveler.nationalgeographic.com/2009/11/destinations-rated/north-america-text/18

[iv] See Bonneville Power Administration's Interim Environmental and Negative Pricing Policy http://www.bpa.gov/corporate/pubs/RODS/2011/ERandNegativePricing_FinalROD_web.pdf. See also, Memorandum of April 28, 2011 prepared by Steve Kern of the Pacific Northwest Utilities Conference Committee

(PNUCC), "Capabilities of Electric Power Resources" The PNUCC was formed in 1946 as a voluntary, informal group of Northwest public and private utilities to assess power and power planning needs.

[v] A Council notice of proposed rulemaking was issued in January 2009 but withdrawn in April 2009 because of limited stakeholder support and because under the existing "opt-in" jurisdiction EFSEC receives so few applications for siting wind projects http://www.efsec.wa.gov/rulerev.shtml#Alt.

[vi] RCW 80.50.090(3).

[vii] My experience as Council chair convinces me that the adjudicatory process is not always needed when an EIS is prepared.

The original language for a public hearing conducted as an adjudicatory hearing under the Administrative Procedure Act dates to 1970 and was intended to cover thermal power plants, especially nuclear plants that were being planned by Energy Northwest. The original language in RCW 80.50.090(3) stated ,"(3) Prior to the issuance of a council recommendation to the governor under section 10 of this act a public hearing , conducted as a contested case under chapter 34.04 RCW ,shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification." That section of RCW 80.50.090(3) was amended in 1989, chapter 175, to the language that presently exists.

The State Environmental Policy Act (SEPA) and its requirement for preparation of an Environmental Impact Statement (EIS) when a project may have "significant impact" came later. SEPA (Senate Bill 545, 1971, 1st Ex Sess. Chapter 109) was signed into law on May 19, 1971.

[viii] See WAC Chapter 463-62

[ix] See RCW 80.50.010 and WAC 463-14-020.

[x] Id.

[xi] This is particularly true with respect to viewscape. See prefiled testimony of Dean Apostol, Exh. 21.00. Applicant used the Federal Highway Administration model which was designed for visual assessments of "highway projects." Testimony highlighted three models for evaluating aesthetic impacts: The Federal Highway Administration, the Forest Service; and the Bureau of Land Management. All have merit.

[xii] See 16 U.S.C. 544. The Columbia River Gorge National Scenic Act. See also Lake Tahoe Basin Act of 1980 (94 Stat. 3383). The NSA also recognizes that there are boundaries beyond which its restrictions are not relevant, as well as the fact that it is in many ways a developed landscape supporting industry and commerce for its residents.

[xiii] See iii, supra.

[xiv] Testimony of Eric Hovee, Exhibit 41.02.

[xv] Measured ground to turbine blade tip. See section 1.4.1.1. Environmental Impact Statement for Whistling Ridge Energy Project.

[xvi] See vii, supra.

[xvii] The Council has approved three wind projects, totaling 563 MW. Of these only 373 MW are on line. By comparison, Washington wind projects online, under construction, or with transmission access rights total more than 7,000 MW, with 2,357 MW online. In other words, the Council's role is minimal. See American Wind Association "Energy Facts" for Washington State. Percentage http://www.awea.org/learnabout/publications/upload/1Q-11-Washington.pdf

Currently online: 2,357 Megawatts (MW)
Added in 2011: 151 MW
Added in 2010: 297 MW
Under construction: 343 MW
Wind projects in queue: 5,831 MW
Washington currently ranks fifth in total overall wind power installation.

[xviii] The Council has considered four wind projects, three in Kittitas County and the current case in Skamania County. In the Kittitas County cases, preemption was sought because of County Commission opposition to the project or final decisions. In the current case, preemption is sought because the County is challenged by intervenors in its local land use planning and zoning.

[xix] RCW 80.50.110 (1)(2) provides that EFSEC licenses govern and supersede all other State laws and regulations while RCW 80.50.140 allows for direct review by the Washington State Supreme Court.

[xx] See footnote xv, supra.

[xxi] The 350 MW threshold triggering Council jurisdiction frequently appears to form the basis for developers planning power plants that fall just below this threshold. Energy Northwest (ENW) is currently planning a combined cycle natural gas facility in Kalama, Washington. Council correspondence with ENW evinces its intent to size the plant as 346 MW. The Clark County's River Road plant, sized at approximately 248 MW when the Council's jurisdiction was 250, is another example.

[xxii] See xvii, supra

[xxiii] RCW 80.50.071.

[xxiv] See section II, "Site Ranking and Protected Areas," PROPOSED WORK PLAN, PACIFIC NORTHWEST HYDRO ASSESSMENT STUDY, PREPARED BYTHE NORTHWEST POWER PLANNING COUNCIL, 700 S. W. Taylor, Portland, Oregon 97205, August 1984. The plan affirmed the fact that site banking and protected areas designations were important to allow hydro development while protecting important fisheries. The analogy is clear: wind and renewable resources are important but should be prioritized and protect important environmentally sensitive areas, whether for viewscapes, wildlife, or otherwise. See ftp://ftp.streamnet.org/pub/streamnet/ProtectedAreas/Documents-Other/Background/ProposedWorkPlanPNWHydroAssessment.pdf

[xxv] Id.

DATED and effective at Stevenson, Washington, this sixth day of October, 2011

James O. Luce, Chair