BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2009-01:
WHISTLING RIDGE ENERGY LLC;
WHISTLING RIDGE ENERGY PROJECT

EXHIBIT NO. 1.01r

WHISTLING RIDGE ENERGY LLC
JASON SPADARO
PREFILED REBUTTAL TESTIMONY
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APPLICANT'S PREFILED REBUTTAL TESTIMONY

WITNESS #1: JASON SPADARO

Q Please state your name.

A Jason Spadaro. I have previously submitted testimony in this matter, and I am available to testify before the Siting Council, and will be available for cross examination.

Q What is the purpose of your testimony?

A I am submitting this testimony in rebuttal to testimony offered by Mr. McIvor and Mr. Smallwood, as well as witnesses for the Yakama Nation.
Wildlife and Habitat Mitigation

Q Please describe the status of wildlife and habitat mitigation discussions with the Washington Department of Fish & Wildlife.

A Whisting Ridge Energy LLC and the biological consulting team we have retained have extensively conferred over a span of multiple years with both the US Fish & Wildlife Service and the Washington Department of Fish & Wildlife (WDFW). In its final letter submitted to EFSEC and BPA dated September 27, 2010, commenting on the Draft EIS, WDFW (Mr. Travis Nelson) confirmed that the Project site is not natural or native coniferous forest habitat, and has been managed as a commercial forestry site for over 100 years. WDFW further confirmed that the pre-project biological assessments are “consistent with standard protocols utilized throughout the U.S. and are consistent with the WDFW Wind Power Guidelines (WDFW 2009).” Mr. Nelson confirmed that the pre-project evaluations represent “best available science,” and confirmed that the Applicant had offered a mitigation proposal, “developed consistent with the WDFW Wind Power Guidelines at a 2:1 replacement ratio.” (See Exhibit No. 1.02r, attached.)

I have been personally involved in extensive discussions with Travis Nelson, the lead biologist and manager with WDFW’s Renewable Energy Section. Attached as Exhibit No. 1.03r is my letter to Mr. Nelson dated July 14, 2010, documenting these discussions, and formally proposing a comprehensive voluntary mitigation offer. The attached letter includes photographs and background information, and the proposed mitigation is summarized below.

Operational Monitoring

WREP has pledged to cooperate with WDFW and EFSEC in establishment of post-construction operational monitoring surveys and the formation of a Technical
Advisory Committee ("TAC") that includes stakeholders as recommended under the WDFW Wind Power Guidelines. We anticipate that the TAC would be a condition of the Cite Certificate Agreement, and would be conducted similarly to the TACs in other EFSEC-approved wind energy facilities.

**Habitat Mitigation**

WREP has complied with a number of the siting guidance principles recommended in the voluntary WDFW Wind Power Guidelines, including locating the project on previously disturbed lands, near existing transmission corridors, and avoidance of high value habitats. Given the disturbed nature of the Project site, along with the working commercial/industrial forest status of the privately-owned property, and its low habitat value, it is not clear to the Applicant that habitat mitigation is required at all under the Wind Power Guidelines for the 56 acres of forested land that will be converted as a result of the Project, for the life of the Project. Nonetheless, WREP proposed to WDFW to comprehensively mitigate potential wildlife impacts as identified in the DEIS, in addition to habitat loss, and achieve with WDFW a mutually beneficial, long-term habitat enhancement outcome from the Project.

Section 5.2.B, the Wind Power Guidelines state the following "Criteria for Mitigation by Acquisition of Replacement Habitat":

> “In each of the mitigation categories listed below, the criteria indicate that replacement habitat should be negotiated in consultation with WDFW and the permitting authority and include the following considerations:

- Like-kind (e.g., shrub-steppe for shrub-steppe; forested for forested, grassland for grassland) and/or of equal or higher habitat value than

\[\text{\footnotesize For commercial forest land, no mitigation ratios or requirements are proposed, but instead, "consultation" is anticipated between the applicant and WDFW.}\]
the impacted areas, noting that an alternative ratio may be negotiated for replacement habitat that differs from impacted habitat;

- Given legal protection (through acquisition in fee, a conservation easement, or other enforceable means);
- Protected from degradation, including development, for the life of the project, to improve habitat function and value over time;
- In the same geographic region as the impacted habitat;
- At some risk of development or habitat degradation and the mitigation results in a net habitat benefit.” [Footnote added]

To meet the objective of comprehensively mitigating all potential habitat and wildlife impacts of the Project, WREP proposed to convey a fee simple or conservation easement interest to WDFW, or a mutually agreeable land trust organization, in approximately 100 acres of Oak woodland and coniferous forest habitat in Klickitat County. In our discussions, WDFW expressed concern over its ability to take control over, and manage the mitigation parcel. We were unable to conclude discussions with conservation organizations prior to the EFSEC hearing, and aligning the conservation parcel with other local properties owned or controlled, and managed for the defined conservation objectives of competent, proven conservation organizations proved somewhat challenging. Consequently, we have worked with Klickitat County to act as grantee of a conservation easement. The mitigation parcel meets important objectives of Klickitat County, discussed below. WDFW supports this approach.

The mitigation property is located in a portion of the SE ¼ of Section 10, Township 3 North, Range 12 East and more fully shown in the regional map and parcel, and ownership maps attached to Exhibit No. 1.03r.
We believe that this property is unique and highly valuable to WDFW and the public interest, and more than satisfies the mitigation criteria quoted from the WDFW Wind Power Guidelines above, for the following reasons:

(1) The property is forested habitat in the same geographical region as the Project site (reference attached WREP vicinity map), and is characterized by Oregon white oak woodlands with some areas of mixed Douglas-fir/ Ponderosa pine/Oregon white oak woodlands. The dominant species is Oregon White Oak. This Oak Woodland habitat is a statewide priority habitat under the WDFW’s Priority Habitats and Species (“PHS”) program. Protection of this habitat provides significantly higher value habitat than the habitat on the Whistling Ridge Project site. Exhibit No. 1.03r includes excerpts from WDFW’s Management “Recommendations for Washington’s Priority Habitats: Oregon White Oak Woodlands,” including a description of the values and characteristics of this habitat.

(2) The WDFW Priority Habitats & Species database confirms the presence of several upland priority species in the nearby vicinity of the proposed mitigation parcel. These documented sites along with other upland wildlife species that we have been observed on or near the proposed mitigation parcel include the following:

- Western Gray Squirrel
- Black tail deer
- American Bald Eagle
- Golden Eagle
- Western Bluebird
- California Kingsnake
- Merriam’s Turkey
Attached to Exhibit No. 1.03r is a map showing documented wildlife sites from the WDFW Priority Habitats and Species database and the proposed mitigation parcel. Also attached is Figure 9.0 of the WDFW Final Western Gray Squirrel Recovery Plan showing results and distribution of western gray squirrel surveys in Klickitat County between 1994-2004, with the approximate location of the SDS proposed mitigation parcel indicated. The proposed mitigation parcel is shown to be in suitable habitat and in one of several areas throughout Klickitat County of concentrated Western Gray Squirrel activity.

(3) The proposed mitigation parcel includes the fish-bearing Silva Creek, a tributary to the Klickitat River whose confluence is a few miles below at the Fisher Hill Bridge and historic Yakama Nation tribal fishing sites. The Klickitat River is habitat for Federally Threatened Lower Columbia River chinook salmon and other salmon species as well as Federally Threatened Lower Columbia River steelhead and bull trout. Silva Creek is habitat for aquatic species and a water quality contributor for these species in the Klickitat and Columbia Rivers.

(4) The proposed mitigation parcel is currently zoned for 5-acre minimum lot size under Klickitat County zoning ordinances. The parcel is at substantial risk of development. Neighboring properties have been subdivided into 5 acre rural home site parcels as the attached parcel viewer and ownership map indicates. By providing this parcel in mitigation, SDS will establish habitat protection in a critical area that, but for the conservation easement, much of the parcel would likely be converted to residential tracts. The conservation easement will prevent additional loss and fragmentation of the Oak woodland priority habitat, including critical habitat for western gray squirrels (although no western gray squirrels reside on the Whistling Ridge Project site). Given
the surrounding development activity, the mitigation parcel will result in substantial net benefit for forested habitat, and ensure the preservation of significant open space.

(5) The proposed mitigation parcel is adjacent to 40 acres of State of Washington Department of Natural Resources (DNR) property and in the vicinity of other DNR ownership as depicted in the parcel viewer and ownership map, attached to Exhibit No. 1.03r. By providing this parcel in mitigation, we hope to complement existing public land ownership in the area and thereby contribute further to critical habitat protection.

Q Has WDFW agreed to this voluntary mitigation proposal

A Yes. Attached as Exhibit No. 1.04r is a letter from Travis Nelson (WDFW) dated November 24, 2010. Mr. Nelson states:

“The intent of the proposed mitigation is to provide for conservation and protection of habitats and species affected by the proposed project development, which are found in the proposed [mitigation] parcel. This parcel will be protected by way of a conservation easement for the life of the project, to be granted to Klickitat County by SDS Lumber (landowner).

Once the conservation easement is executed on the land as described here, the mitigation will be considered acceptable and complete per the WDFW Wind Power Guidelines.”
Q Has Klickitat County agreed to accept the conservation parcel, as grantee?

A Tentatively, yes. In our discussions, the Klickitat County Commissioners expressed enthusiasm for the proposed conservation parcel, and have acknowledged that the conservation parcel will be beneficial to the County in protecting species and habitat in this area of the County, in furtherance of the County’s goals and objectives pursuant to Growth Management Act requirements to protect critical wildlife habitat.

Attached as Exhibit No. 1.05r is a letter dated November 9, 2010, signed by the Klickitat County Board of Commissioners, indicating the County’s “non-binding statement of our intent to enter into discussion with SDS Lumber Company for the purpose of developing a conservation easement agreement.” We are continuing discussions with Klickitat County, including refining the conservation purpose (including resolving whether any grazing should be permitted, along with any active or passive recreation, including trails). We will continue to collaborate with WDFW in formulating the conservation provisions of the conservation easement, and welcome EFSEC’s input as well. SDS will be solely responsible for all ongoing costs of meeting and enforcing the conservation objectives of the mitigation parcel.

History of Engagement By and Between SDS Lumber (Jason Spadaro on behalf of SDS and Whistling Ridge Energy) and the Yakama Nation

Q Would you please describe the efforts Whistling Ridge has made to work with the Yakama Nation, as well as tribal members who reside near the Project area?

A SDS Lumber Company has long-term, deep relationships with the Confederated Tribes of the Yakama Nation, including its members who live in the vicinity of the Whistling Ridge Energy Project site. In our view, it has always been essential to
involve both the Tribal Government and the Tribal Council (in Toppenish) as well as Tribal members who reside near SDS properties, and who are elders of the Yakama Nation. On other SDS projects the Yakama Nation’s tribal government has conferred with Tribal members who live along the Columbia River (and who are traditional and hereditary members of Columbia River Tribes) concerning cultural resource issues. It is, and has been, our company’s practice to involve elders from the River Tribes, along with officials designated by the Tribal Council in Toppenish, in these matters. While some progress has been made with the Yakama Nation tribal government concerning the Whistling Ridge Energy Project, it has been frustrating to us that the Yakama Nation has provided an inconsistent and sometimes confusing engagement with us in these proceedings, and has departed from its practice of engaging with local hereditary chiefs and taken issue with our engagement of these chiefs who represent the interests of their people and ancestors.

Q Would you please provide a general summary of your efforts to reach out to, and work with representative of the Yakama Nation?

A Yes. The summary is as follows:

**History of WREP’s Communication and Engagement with Yakama Nation**

**October 2007:** SDS provides initial project presentation and site tour to local tribal Chief Johnny Jackson and Chief Wilbur Slockish asking for any concerns regarding the project.
Nov 2007 – Sept 2008: SDS continues cooperative efforts with local Columbia River Chiefs in review of the project and providing further opportunities for evaluation of site.

October 28, 2008: Letter sent from SDS to Yakama Nation Cultural Resources staff asking for concerns of Yakama Nation and offering site tour and cooperative engagement. We did not receive any response to this offer.

January 29, 2009: Letters received by SDS from the Columbia River Chiefs indicating they appreciated the cooperative approach of SDS, have no cultural resource concerns with the project site and support the project.

April 13, 2009 and May 13, 2009: Letters sent from Yakama Nation Cultural Resources Program Manager, Johnson Meninick, to EFSEC and BPA stating that the Yakama Nation has concerns with cultural resources on the project site and that the Cultural Resources Program staff needed to examine the site. To our surprise, the “concerns” related to cultural resources were voiced in these letters, despite the fact that no one from the Cultural Resources Program had visited the site.

June 25, 2009: SDS provided copy of letter from Columbia River Chiefs to Johnson Meninick stating they have been cooperatively approached by SDS and have personally inspected the site numerous times, finding no significant cultural resources concerns.

July 13, 2009: Columbia River Chiefs, Wilbur Slockish and Johnny Jackson, send letters to EFSEC requesting right to intervene on behalf of the Klickitat and Cascades Tribes of the Yakama Nation. Request stated that they were representing the Klickitat and Cascades Tribes not the Yakama Nation.

July 14, 2009: Yakama Nation Cultural Resources Program sends letter to EFSEC requesting legal intervention, requesting that its comments supersede those of the Columbia River Chiefs, stating that Columbia River Chiefs have attempted to
represent the Yakama Nation without proper authority and re-asserting that the Yakama Cultural Resources Program has concerns with the project site.

**July 15, 2009:** Letter from SDS to Johnson Meninick explaining past reviews of the site with Columbia River Chiefs, expressing SDS interest in working cooperatively with the Yakama Nation and offering site tour for Cultural Resource Program staff.

**November 6, 2009:** SDS informs Yakama Nation Cultural Resources Program of additional archaeological surveys that will be performed on the site by URS Consultants and invites Yakama Nation staff to participate in the survey efforts. The Cultural Resources Program chose not to accompany URS on the site during this survey effort.

**November 9, 2009:** SDS meets with Johnson Meninick, Joanna Meninick and Jessica Lally in Toppenish to discuss cultural resource survey to be performed by Yakama Nation Cultural Resource Department. SDS enters into contract on November 10 (amended on November 18 for expanded budget) with Yakama Nation Cultural Resources Program for an independent cultural resources survey of the site by Yakama staff. A Scope of Work is provided to SDS explaining how the cultural resource surveys will be performed, work product to be delivered, etc.

**December 2009:** Draft Archaeological Report by URS Consultants for SDS provided to Yakama Nation. Report indicated no historic or cultural resources found except for Haran farmstead which was later determined ineligible for historic listing.

**December 9, 2009:** SDS provides site tour for Yakama Nation Cultural Resources Program staff members Joanna Meninick, Jessica Lally and Michael Thompson.

**January 4, 2010:** Cultural Resource Review and Consultation Report received from Yakama Nation stating that cultural resources exist in the project area (a “vision quest” site). The Cultural Resources Program expressed concern regarding construction of wind turbines in this area along the southern ridge of the Project.
“Personal communication” with Johnson Meninick is listed as sole evidence of vision quest site. No other corroborating evidence or site characterizes are noted or analyzed to support this finding.

**January 7, 2010**: SDS reviews the site again with Columbia River Chiefs, Wilbur Slockish and Johnny Jackson to determine if the project area was a vision quest site or otherwise culturally significant. SDS reviews the Yakama Cultural Resources Review and Consultation Report with River Chiefs. The Chiefs confirm they have no knowledge, evidence or history of use of the site as a vision quest location. No corroborating of confirming physical evidence or historic cultural characteristics of such use had been found by URS archaeologists or any other archaeologists who have surveyed the site.

**January 13, 2010**: The Columbia River Chiefs provide SDS a copy of a letter sent to Yakama Nation Cultural Committee stating that they have personally reviewed the site with SDS and confirm and maintain that the project area does not have culturally significant resources. Columbia River Chiefs questioned many conclusions of the Cultural Resource Program Report as unsupportable.

**February 2, 2010**: SDS meets with Yakama Nation Tribal Council in Toppenish to discuss the Program Staff’s report and offer site tour to Tribal Council and Cultural Committee members. Parties agree on tour for the Tribal Council’s Cultural Committee members who would report back to the full Tribal Council.

**February 4, 2010**: SDS provided with copy of memorandum from the Tribal Council’s Cultural Committee Chair, Lavina Washines, to DAHP, EFSEC and BPA stating that the Cultural Resources Staff’s Review and Consultation Report is under further review by the Yakama Nation and all future correspondence should be conducted through the Cultural Committee or Tribal Council Chairman. Ms. Washines, as Tribal Council Chair of the Committee, repudiates the Staff Report and
expressly directs government agencies to return the report and not to consider the
Report and to withdraw it from the public record. A copy of this memorandum is
attached hereto as Exhibit No. 1.06r.

**May 5, 2010**: SDS sends a letter to Cultural Committee Chair Lavina Washines
offering continued consultation and tour for Cultural Committee members and Tribal
Council Chairman.

**May 14, 2010**: SDS provides site tour to Cultural Committee Chair Lavina
Washines. Chair Washines tours and examines project area and confirms that there
are no Tribal cultural resources on site.

**August 2, 2010**: SDS provides a site tour for Tribal Council Chairman, Harry
Smiskin. The parties discuss the cooperative consultation efforts of SDS and
Cultural Resources staff of the Yakama Nation. Chairman Smiskin suggests
additional review of site by Yakama Nation TFW Archaeologist David Powell and
Yakama Nation Cultural Resource Specialist Greg Kiona.

**August 12, 2010**: SDS provides a site tour of project area to Yakama Nation TFW
Archeologist David Powell and Yakama Nation Cultural Resource Specialist Greg
Kiona. SDS is later provided copy of the report prepared by Mr. Powell. This report
reflects the dispute between various members of the Yakama Nation related to the
site, including the opinions of the ancestral Chiefs.

**October 12, 2010**: SDS receives a memorandum from Yakama Nation Cultural
Committee and Land Committee requesting a meeting as soon as possible in regards
to Whistling Ridge Project and consultation.

**October 19, 2010**: SDS meets with Yakama Nation Cultural Committee, Lands
Committee and Tribal Council Executive Committee regarding consultation and
cultural resources related to Whistling Ridge Project.
November 30, 2010: SDS sends a letter to Yakama Nation Cultural Resource Program Director offering a site tour and requesting meeting to discuss any cultural resource concerns of Yakama Nation related to Whistling Ridge Project.

Q What is the current status of your efforts to resolve matters with the Yakama Nation?

A We greatly appreciate the involvement by Tribal Council Members, and we are continuing our efforts to reach a resolution with the Yakama Nation. In our view, we are making progress, and will continue our efforts to the maximum reasonable extent possible.