

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Hearing Volume II
WHISTLING RIDGE ENERGY, LLC.) Pages 167 - 377
WHISTLING RIDGE ENERGY PROJECT)
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A hearing in the above matter was held on Tuesday, January 4, 2011, at the Skamania Lodge, 1131 S.W. Skamania Lodge Way, in Stevenson, Washington at 8:30 a.m., before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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REPORTED BY:

SHAUN LINSE, CCR
CCR NO. 2029

1 APPEARANCES (Cont'd):

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6 SAVE OUR SCENIC AREA (SOSA), J. Richard Aramburu,
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9 SKAMANIA COUNTY and KLICKITAT COUNTY PUBLIC
10 ECONOMIC DEVELOPMENT AUTHORITY, Susan Drummond, Attorney at
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13 * * * * *

14 JUDGE WALLIS: Good morning. This is the January
15 4, 2011 session in the matter of EFSEC Docket No. 2009-01
16 in the matter of the application for Whistling Ridge Energy
17 Project. At the outset we've had an administrative
18 discussion, and in light of the fact that there are no
19 questions to be asked of witness Sarah McDaniel for prefiled
20 exhibits, they will be offered and received in evidence.

21 Mr. McMahan, is that satisfactory to do that now?

22 MR. McMAHAN: We have not prepared her sworn
23 confirmation testimony yet, but we will do that. She's not
24 scheduled to testify until I think Thursday anyhow.

25 JUDGE WALLIS: Very well. Yesterday we had

1 completed the examination of Mr. Spadaro and were in the
2 process of some procedural discussions.

3 Mr. Aramburu, I think you had one or two matters
4 pending.

5 MR. ARAMBURU: Yes, thank you.

6 How are we doing on the sound over there? Good?
7 Thank you.

8 First of all, just as a housekeeping matter, we
9 would move the admission of Exhibits 1.07c, 1.08c, 1.09c,
10 and 1.10c.

11 (Exhibit Nos. 1.07c, 1.08c, 1.09c, and 1.10c
12 offered into evidence.)

13 MR. KAHN: On the same line Exhibits 1.11C, 1.15C,
14 and 1.16C.

15 (Exhibits Nos. 1.11C, 1.15C, and 1.16C offered
16 into evidence.)

17 MR. ARAMBURU: Those matters were exhibits that
18 were referenced in the testimony of Mr. Spadaro yesterday so
19 we would move their admission. I take it that will be
20 necessary for all of the rebuttal exhibits that it will be
21 necessary for us to make a motion to admit those exhibits,
22 Mr. Wallis?

23 JUDGE WALLIS: My preference would be that all
24 exhibits would be moved and appropriately admitted into the
25 record, and that was Exhibits 1.15 and 1.16, is that

1 correct, in addition to the four that are on the December 31
2 exhibit list?

3 MR. ARAMBURU: Yes, that's correct.

4 JUDGE WALLIS: Very well. Is there any objection?

5 MR. McMAHAN: Well, I think I had heard you make a
6 ruling on that, Your Honor. I question whether sufficient
7 foundation was laid for a number of those exhibits, but I
8 heard that it's the Council's intention to admit most
9 exhibits into the record.

10 JUDGE WALLIS: No, I said appropriately admitted.
11 That is after the opportunity for objection and
12 consideration of any objections.

13 MR. McMAHAN: Well, thank you. And, you know, I'm
14 at a loss right now because I don't have my cheat sheet from
15 yesterday where I wrote -- I just found it. 1.11, yes, we
16 stipulated to that.

17 I want to make sure I'm totally understanding
18 what's happening here, Your Honor. I'm sorry. 1.15 is the
19 Skamania County ordinance. I believe that was the next one
20 on the list; is that correct? Yeah, 1.15 no objection, 1.16
21 no objection. Is it just the three?

22 MR. ARAMBURU: The three on our exhibits from
23 yesterday. We had the rebuttal exhibits that we submitted
24 earlier that Mr. Aramburu just spoke about.

25 MR. McMAHAN: So is it my understanding the

1 rebuttal exhibits previously are also admitted into the
2 record from yesterday?

3 JUDGE WALLIS: That's what we're considering right
4 now, yes.

5 MR. McMAHAN: Sorry. I'm still suffering from --

6 JUDGE WALLIS: Let's be off the record for a
7 moment.

8 (Discussion off the record.)

9 JUDGE WALLIS: Would it better to defer this until
10 after the break?

11 MR. McMAHAN: I would appreciate that, Your Honor,
12 yes.

13 JUDGE WALLIS: With that are we ready to proceed
14 with the next witness, Mr. Aramburu?

15 MR. ARAMBURU: Thank you, Mr. Wallis. At the
16 conclusion of yesterday's hearing, we noted that the
17 testimony of Mr. Spadaro included what was in essence
18 supplemental testimony concerning the number and size of
19 turbines which reflected in our view an apparent good faith
20 effort to try to mitigate impacts here; however, we have
21 been proceeding for the last year and a half, including
22 preparation of an environmental impact statement, with plans
23 that showed fifty 1.5-megawatt turbines. The announcement
24 of this change in plan was made after the hearing started,
25 after we all arrived here, after opening statements, and I

1 am disappointed that we were not given notice of this during
2 one of our many and lengthy prehearing conferences so that
3 we might have an opportunity to review and consider the
4 proposals. So that puts us in a bit of a dilemma because
5 the testimony, the change in the number of turbines create a
6 number of issues with respect to a number of witnesses.

7 For example, the size of the turbines now may well
8 have changed. We've done some calculations last night. In
9 fact the area of the turbines, the swept area of the blades
10 now seems to have substantially increased with the proposal
11 going from 77 meters to 100 meters as Mr. Spadaro testified.
12 I think there's going to be impact on noise issues, all of
13 which proceeded ahead on a 1.5-megawatt turbine.

14 The geologic issues proceeded on the basis of the
15 1.5-megawatt turbine, and the application requirements of
16 this Council adopted some time ago require that the
17 Applicant describe the characteristics of the construction
18 to occur at the proposed site, including the type, size, and
19 cost of the facility, and that's in your regulation
20 463-60-145.

21 So this kind of puts us into somewhat of a turmoil
22 with respect to upcoming witnesses. For example,
23 Mr. Smallwood, and I'll let Mr. Kahn discuss this, he has
24 done an analysis based upon 50 turbines with a 77-meter
25 swept area. Now we have a different set of turbines,

1 different areas, different things. More importantly we have
2 apparently a different alignment of turbines related to the
3 visual resources, and while that's principally the Friends'
4 issue I will make note that the Council and particularly the
5 Chair have been very concerned about making sure that when
6 we do have a site visit, we know what the turbines are, what
7 can be seen from where, and that's been a matter of concern
8 to the Council, and yet we have a new proposal that comes in
9 that lack any identification of where these turbines are
10 actually going to be.

11 So we think some consideration is due to
12 intervenors regarding this subject matter, and I have
13 several requests of the Council that I would like to make.
14 Again, this was not of our making. These materials came in
15 yesterday. So we would request a continuance for a
16 reasonable period of time to allow us to consider the
17 effects of this proposal, and that would follow the
18 direction, our requested direction from the Council that the
19 Applicant do indeed prepare a drawing and a diagram similar
20 to Exhibit 1.11c which is on the board which would indicate
21 at one time, one place just where all these things are.
22 This is a wind turbine project, and the most important thing
23 is how many wind turbines and where they are. We don't have
24 any kind of drawings of that.

25 We also request the opportunity to provide some

1 additional exhibits for some of the upcoming witnesses if
2 the continuance is not granted. For example, Mr. Nierenberg
3 who is the noise expert apparently now may be the person to
4 talk about these issues of spacing between the wind turbines
5 and the wake effects that Mr. Spadaro described in his
6 testimony yesterday.

7 So we would have leave of the Council to provide
8 some additional exhibits, but we also would like to have
9 leave of the Council to provide potentially some additional
10 witnesses on these subjects matters. And I'll be up front.
11 It does seem to me the question of this turbine spacing has
12 now been made a pretty major issue in these proceedings, and
13 if we can shrink the distance between the turbines it will
14 allows us to make many changes in this proposal that may
15 have significant effects on principal issues here which
16 concern the number of wind turbines and where they're
17 located.

18 So we make those what I count as four requests to
19 the Council in light of the circumstances here. I also make
20 note that the EIS has gone forward based upon the
21 1.5-megawatt turbines. The noise testimony that presumably
22 we're going to hear yesterday all appears to have been
23 presented based upon a 1.5-megawatt turbine and specific
24 distances from the individual turbines to the individual
25 noise receivers. So, again, we're put into a dilemma and

1 while I don't want to ascribe any ulterior motives to the
2 Applicant coming at the time that it does and impacting the
3 testimony of witnesses who have spent hundreds of hours and
4 thousands of dollars to prepare testimony, it would appear
5 to us to be a somewhat calculated maneuver in these
6 proceedings and I think inappropriate.

7 The Council is charged with making a
8 recommendation to the Governor, what things does the
9 Governor need to know. It seems to me where the turbines
10 are, how many we need, and where they're spaced is a
11 critical question.

12 The other matter that I want to bring up is that I
13 made objections yesterday to the testimony of Mr. Spadaro
14 and his continued reliance on confidential information which
15 is a net that keeps spreading out here to cover other items.
16 But the issues of wind speed and direction is a very
17 important issue here, and we would request the opportunity
18 to review just basic wind speed and direction information
19 which seems to be available to the Applicant to assist us
20 and to assist the Council in reaching a decision regarding
21 these wake effects and the other circumstances. Certainly
22 if this project can be reduced in size, reduced in scope,
23 that is to everyone's benefit.

24 So we make those requests. We do also have a
25 couple of additional questions for Mr. Spadaro. So those

1 would be our requests, Mr. Wallis. Thank you for listening
2 to me.

3 MR. PEEPLES: Are you ready for a response?

4 JUDGE WALLIS: Yes.

5 MR. PEEPLES: First of all, I don't think just
6 about anything counsel said is true. I want you to turn to
7 page 2.3-3 of the application. We have always described
8 this project as up to 50 turbines. We have always noted
9 that it will probably be less; that all the layouts, all
10 information were worst case. This is nothing new at all. I
11 would like to read from the application.

12 The project would consist of up to 50 turbines.
13 Because of the height and activity in the wind energy
14 industry pricing and availability of turbines are highly
15 variable; consequently, specific turbine type and
16 manufacturer has not been selected. However, it is likely
17 that the turbines would be in the range of 1.2 to
18 2.5 megawatts. I misquoted that and the range is in the
19 wrong place. And the range of key parameters such as
20 turbine height and diameter can be anticipated, even though
21 the turbine manufacturer is not yet known.

22 Then it goes on to say that our modeling that went
23 up to 426 feet tall, a 262-foot hub height, 160-foot radius
24 blades measured from the ground to the turbine blade tip.
25 We were putting in 100 meter blades, not 77.

1 You go to noise, the noise modeling that we did
2 was on a 1.8 megawatt. 50 to 60 hertz was the noisiest
3 thing on the market. This is a worst-case situation. There
4 is no surprise. I have personally talked with the Counsel
5 for the Environment, went over what's happened in past cases
6 and pointed out they'll probably be much bigger turbines and
7 less out there. What we were painting was a worst-case
8 situation. There is no change period.

9 And I don't think the questions, you know, and the
10 requests have any legitimacy at all. It is merely an
11 attempt to derail this project and cause time delay and more
12 money.

13 Number two, we tried to mitigate, you guys, and
14 you're seeing what's happened and so that's it. We could
15 make this change with this layout at the time of
16 construction if certified.

17 JUDGE WALLIS: Mr. Marvin, do you have any
18 comments?

19 MR. MARVIN: Well, I believe that there is some
20 interesting issues here, and I have some questions as to
21 whether the -- and I guess I would have to defer to the
22 experts on this as to what the value of the particular rows
23 representations are at this point. My understanding is that
24 they were "worst-case scenario" of fifty, 2.5-megawatt
25 turbines. My understanding is that if that was the case

1 that they would be only thirty 2.5-megawatt turbines. So
2 it's not really a worst-case scenario. It's a scenario
3 that's not even on the, you know, within the realm of
4 possibility with regard to the pictorial issues. And I just
5 offer that as kind of a common sense analysis that they're
6 not going to be building fifty 2.5-megawatt turbines out
7 there. They've agreed to the number 30 if they go ahead
8 with it.

9 I think that, yes, this strikes me as a good faith
10 attempt to mitigate visual impacts; unfortunately, I think
11 it also now that we have a little narrower focus in terms of
12 what we're looking at. It creates some problems with the
13 information that we have in front of us. Again, I would
14 defer to the expertise of the individuals who will be
15 testifying and to the Council in terms of their comfort with
16 regard to the exhibits that are brought forward on visual
17 impact. I haven't had the opportunity to consult with my
18 expert regarding biological impacts, but I suspect there's
19 probably going to be a change in his analysis.

20 But I do think that it is worth noting that, you
21 know, that it does appear like from before we do not have,
22 we do not have the visual impacts, we do not have materials
23 that represent the project as it is currently proposed.

24 JUDGE WALLIS: Thank you.

25 Ms. Drummond.

1 MS. DRUMMOND: Yes, Susan Drummond for Skamania
2 County and Klickitat County Economic Development Authority.

3 Just a very brief comment, I've been working on
4 wind development for close to a decade and have looked at
5 well over 17 applications for wind projects, and in every
6 project where I've seen a developer move from a lower
7 megawatt size turbine to a higher size megawatt to reduce
8 the total number of turbines in their project, it's always,
9 always been viewed as mitigation. I've actually never once
10 seen an objection to what is in fact a mitigation proposal
11 which produces impacts to the project.

12 Just one other note, you know, the developer never
13 specified the exact turbine size and model that they will
14 use in their application but provides a range as was done
15 here, and the reason for doing that is because what is
16 available on the market changes over time. So from our
17 perspective we definitely view this as mitigation, as a
18 positive, and certainly well within the application as it
19 was proposed. Thank you.

20 JUDGE WALLIS: Thank you.

21 MR. KAHN: Your Honor, if I may comment. We are
22 not objecting to the mitigation. We agree that less is
23 probably better, but we don't know and that's the problem.
24 Mr. Peeples said that it's never been 50. It's always been
25 up to 50. Well, exhibit whatever that is on the board there

1 is the document we got from the Applicant and it shows 50.
2 All of the visual simulations in the application and in the
3 testimony from all the witnesses refer to 50. I will
4 acknowledge that less is probably better, but even yesterday
5 Mr. Spadaro said the location of any turbines at this point
6 is hypothetical. He also said there would be less than 38
7 because they may go larger so we are constantly moving goal
8 posts.

9 Friends and SOSA have spent a considerable amount
10 of money on experts to analyze the application with all the
11 maps and all the visual simulations that showed 50 turbines.
12 We don't know which ones are being removed, where they are,
13 what the scenic impact is, what the impact to wildlife is.
14 As Mr. Aramburu pointed out the blades are bigger. It has a
15 larger swept area which likely has a significant increase on
16 avian and bat mortality. Dr. Smallwood has provided a
17 lengthy analysis based on the representations from the
18 Applicant as to the number and the approximate size of the
19 turbine. Everything has changed.

20 Again, we are not objecting to the mitigation. We
21 welcome it. We want an opportunity to evaluate it and to
22 determine whether it is consistent to enable to provide
23 information to help the Council to determine if it meets the
24 standard of minimizing adverse effects. At this point we
25 don't know what they are, and there's no meaningful

1 analysis, and we believe that a short continuance would be
2 appropriate to give us an opportunity to look at that.
3 There's been no analysis of visual impacts that is
4 apparently now the present proposal, and that's absolutely
5 necessary. We also have an EIS which was largely based upon
6 50 turbines. So you've got information in the EIS that is
7 apparently out of date now. We think a short continuance is
8 appropriate to address this.

9 MR. McMAHAN: Your Honor, if I might make two
10 quick responses here. I promise it will be short.

11 First, you know, Mr. Kahn just verified the
12 concerns that I've had about that map. We gave turbine
13 location data in response to discovery requests; that you
14 will recall they requested UTM data that was used for the
15 visual assessments. We provided that to them. So hence
16 they have overlaid that discovery response onto a map that
17 was never in the public record. That is not in the
18 application materials, and that has never been anything
19 other than a combination of the corridors from -- Mr. Kahn,
20 I'd like to finish.

21 MR. KAHN: I didn't say anything.

22 MR. McMAHAN: Never been a response to -- that has
23 never been submitted. We have never ever represented that
24 those locations will be built, and Mr. Spadaro's testimony
25 is quite clear about the micro-siting considerations for

1 final siting of turbines.

2 The other piece I would like to say is this
3 Council will remember in the Kittitas Valley case where we
4 minimized the impacts of that project by sizing it down. We
5 had the opponents arguing you didn't do visual modeling of
6 that downsized minimized mitigated project. They argued
7 that all the way to the Supreme Court and they lost. The
8 Supreme Court said it was appropriate mitigation. The
9 Council's determination was appropriate. We didn't have to
10 keep modeling and modeling and modeling a smaller and
11 smaller and smaller project because what you have is a
12 visual assessment of something that Mr. Marvin correctly
13 stated is never going to be built and just simply look at
14 the visual simulations if you want and imagine a lot less
15 turbines, and that's sufficient information for
16 consideration of the project.

17 JUDGE WALLIS: Very well. I think we're prepared
18 to rule at this time. I'll take Mr. Aramburu's request and
19 motion for the four items of relief that he requested, and
20 that motion is denied. The proposal appears to the Council
21 to be very consistent with the application. Consistent with
22 the process of developing the application to mitigate
23 matters is consistent as Council notes with prior
24 proceedings in which comparable changes have been suggested,
25 and what we have is a result as Mr. Marvin notes that it is

1 mitigated from the original proposal which all the way
2 through has been up to the stated number of turbines.

3 So I will grant leave to reopen the motion if the
4 witnesses in this proceeding indicate that there would be a
5 substantial adverse effect from this; that is, was not of
6 the sort indicated in the application. Apart from that, the
7 motion is denied.

8 MR. KAHN: One comment, if I may, Your Honor.

9 JUDGE WALLIS: Mr. Kahn.

10 MR. KAHN: You just indicated that you'd grant
11 leave to reopen if the witnesses indicate that there will be
12 adverse effects from the new proposal. We don't know what
13 the new proposal is. Mr. Spadaro yesterday said that any
14 turbine location at this point in terms of size, location,
15 number is hypothetical so how can the witness talk about
16 adverse impacts on something that we don't know what it is?

17 JUDGE WALLIS: The fact is as I believe
18 Mr. McMahan indicated that all wind project proposals are
19 based upon what has been referred to here as a worst-case
20 scenario, and it is only after approval of a project that
21 final locations of turbines and final equipment can be
22 determined. So the review of this application and the
23 environmental review are being based upon this worst-case
24 scenario in which the turbine tower heights are the maximum,
25 the number of turbines is the maximum, and so on. So we

1 find no adverse effect to your clients by reduction in the
2 environmental consequences of the application.

3 So now does the Applicant wish to respond to
4 Mr. Aramburu's objection to the lack of certain information?

5 MR. McMAHAN: At this point I think I have lost
6 track of what that was, and I am wondering if we haven't
7 already addressed it.

8 JUDGE WALLIS: Mr. Aramburu, would you like to
9 restate that.

10 MR. ARAMBURU: Well, there were two requests for
11 information I made. One is that we have in front of us a
12 drawing that shows what the current proposal is so that at
13 least we have that identified.

14 JUDGE WALLIS: Let me clarify. I believe I heard
15 counsel for the Applicant say that this drawing does not
16 represent what the current application is. Did I hear that
17 correct?

18 MR. McMAHAN: That is correct.

19 MR. ARAMBURU: And I understand that, but I think
20 it would be useful for direction to the Applicant to prepare
21 a drawing that will tell us once and for all what the
22 proposal is so we have that in front of us. So that was my
23 first request. My second request --

24 JUDGE WALLIS: Let's stop here and take these
25 items one by one.

1 MR. McMAHAN: Your Honor, this Council will recall
2 in the Kittitas Valley case that the county came in and said
3 where's the final site plan. Those were the words they
4 used, final site plan. We can't manage how to address the
5 impacts of the proposal until a final site plan with final
6 locations is proposed. The same argument is being made
7 here, the same argument's been addressed, the same argument
8 was addressed by the Supreme Court. That is a frivolous
9 argument to make here in these proceedings.

10 MR. ARAMBURU: If we don't know where they are,
11 then I don't know how we can proceed so.

12 JUDGE WALLIS: The information on the precise
13 location is not available at this point in the proceeding,
14 and the application is being processed, the environmental
15 review is being processed on the basis of the approximate
16 locations and the information relating to what has been
17 referred to as a worst-case scenario. So that motion is
18 denied.

19 MR. ARAMBURU: My second motion was to direct the
20 Applicant to make available to us information regarding wind
21 speed and direction for this site. My request in that
22 regard has to do with the testimony from Mr. Spadaro.
23 Mr. Spadaro indicated yesterday that the distance between
24 the individual turbines is a function of wake effect which
25 is directly related to the wind direction and speed. And so

1 that if the wind direction and speed is from a certain
2 direction that affects the distance between the turbines
3 that it may allow the reduction of this distance between the
4 individual turbines. We don't have that information.

5 Mr. Spadaro apparently does, and we would request that wind
6 rose information that identifies the prevailing winds, the
7 percentage of the time those winds passing over the site be
8 made available to us so that we can respond appropriately to
9 the question that is going to be an important question here
10 as to how tightly these individual turbines can be placed
11 together.

12 So we're not asking for any economic information.
13 We are not asking for any proprietary information but
14 information as to wind speed, direction, duration, common
15 wind rose information we think is appropriate to be provided
16 to us.

17 MR. McMAHAN: Two things, Your Honor, two main
18 things. First of all, this Applicant is not going to build
19 a project with turbines that are subject to too much wake
20 effect. Some of that isn't even determined until
21 micro-siting quite frankly. You're aware of that.

22 Secondly, we've been down this road over and over
23 and over again. The opponents litigated, relitigated, asked
24 for reconsideration over and over this issue on confidential
25 data. Wind direction, wind speed, met tower information was

1 all subject to that discovery request, and this Council has
2 already made a ruling on it. That is highly proprietary,
3 trade secret, confidential data which if it's poised in this
4 public arena it becomes available to any, any competitor or
5 any utility to judge the merits of its application to
6 fashion their own response to proposals or requests for
7 proposals accordingly. That is highly inappropriate to be
8 offered into evidence and frankly it is completely
9 irrelevant as we argued before. It is immaterial.

10 Given the fact that we are permitting corridors
11 here that are being considered for environmental review on
12 their own merits, it's irrelevant whether the wind regime is
13 in any particular configuration, in any particular place.
14 You know, frankly SOSA proved yesterday through the
15 Northwest Seed maps this is a really windy site. In terms
16 of where on this site particular class 6, class 4, class 5
17 winds are, you know, that is information to some extent is
18 known, to some extent it isn't. The extent it is, is based
19 upon meteorological data which is confidential and you
20 already ruled accordingly.

21 JUDGE WALLIS: Very well. This request is also
22 denied for the reasons stated by Mr. McMahan. It was
23 subject of a discovery and the discovery disallowed. Much
24 of the information is not available as your
25 cross-examination demonstrated yesterday, and that kind of

1 study is undertaken to engage in what's called the
2 micro-siting and placement of individual turbines once a
3 project is approved. You do, of course, have leave to
4 inquire of experts during their testimony about the general
5 concerns to which counsel and Mr. Spadaro have cited
6 yesterday.

7 MR. ARAMBURU: My motion is denied then.

8 JUDGE WALLIS: You indicated you had questions to
9 ask Mr. Spadaro?

10 MR. ARAMBURU: We have a couple additional
11 questions.

12 MR. McMAHAN: Your Honor, may I just ask a
13 clarifying question here? I believe this is recross, and
14 I'm wondering if they will be held to the scope of prior
15 redirect from other parties?

16 JUDGE WALLIS: Yes.

17 MR. McMAHAN: And the Council which was none. So
18 this is held to the scope of any other cross-examination of
19 other parties?

20 JUDGE WALLIS: Yes.

21

22 JASON SPADARO,
23 having previously been first duly sworn on oath,
24 testified as follows:

25

1 costs and values of the project. Those are not based upon
2 final turbine quotes. As we've stated we do not have final
3 turbines selected and quotations on the cost of those
4 turbines. We have estimates in the model that another party
5 has sponsored that will be appropriate for you to ask that
6 party the question.

7 Q. The question for you: You're project manager here
8 as I understand for this project, and what is this project
9 going to cost with the 38 turbines?

10 A. Again, our cost estimates are within a range. I
11 think the application sponsored this question estimated it's
12 on the order of \$150 million project cost to construct. I
13 believe from memory that that is somewhat accurate, in the
14 ball park.

15 Q. Again, was that for the 50-turbine proposal?

16 A. That's for a 75-megawatt project with a 230 kV
17 interconnection. That is not for a specific layout. Again,
18 our application did not specify a particular layout of
19 turbines or particular number. Our modeling of visual impact
20 and other impacts assumed 50 turbines in a worst-case
21 scenario.

22 Q. Let me ask you this question which is a more simple
23 one I guess. Is there any change in cost from going to 50
24 turbines, to fifty 1.5 megawatt turbines to I think your
25 number was thirty-eight 2-megawatt turbines, more or less or

1 the same?

2 A. Indeterminable. Let me try to answer the question
3 as simply as I can. The turbine, the type of turbine, the
4 size of the turbine is going to vary in cost by the vendor
5 and the supplier of the turbine. Larger turbines may be more
6 expensive at a particular time in the marketplace. Smaller
7 turbines may be less expensive at a particular time in the
8 marketplace. It all depends upon supply and demand which is
9 indeterminable at the present time.

10 The application shows estimated costs and economic
11 benefits to the county based upon some generalized numbers.
12 I cannot answer your question whether going with fewer
13 larger turbines increases the cost or decreases the cost
14 until we have final turbine quotations.

15 Q. But it is the case that you're going to be saving a
16 total of 12 foundations for the turbines no matter what we
17 end up with. Is that not the case?

18 A. Offset by other factors that may increase the cost.

19 Q. Well, such as?

20 A. Transportation of larger turbines have different
21 characteristics. There are a number of variables that go
22 into the turbine cost and cost of construction.

23 JUDGE WALLIS: Mr. Aramburu, this line of
24 questioning appears to go over the same ground that was
25 covered yesterday. I'm wondering if you have specific

1 questions relating to topics that were raised by other
2 counsel on cross; otherwise we can conclude this.

3 MR. ARAMBURU: Okay. That's all the questions
4 that I have.

5 MR. KAHN: Your Honor, I have three brief
6 questions.

7 CROSS-EXAMINATION

8 BY MR. KAHN:

9 Q. Mr. Spadaro, if the project is downsized from 50 to
10 38 or some smaller number the exterior boundaries of the
11 project will not change; is that correct?

12 A. That is correct.

13 Q. You have a laser pointer in front of you there?
14 Could you on the map on the left which is from Figure 2.1.1
15 from the application, can you just with the laser pointer
16 show where Underwood Mountain, if you know where it is on
17 that map.

18 A. For the record the --

19 MR. PEEPLES: Your Honor, I object to this line of
20 questioning. It's going back to the same thing that he did
21 on his direct. This is outside the scope of any of the
22 other cross-examination after he asked his questions. We're
23 going over old things again.

24 MR. KAHN: I would have been done now, been
25 finished. Mr. Marvin asked several questions about the

1 nature of the wind up there and so did Mr. Cantrell about
2 the nature of the wind in various aspects of the project. I
3 have three questions. One of them was asked. I have two
4 brief more on the same subject.

5 JUDGE WALLIS: It does strike me that this is
6 rehashing the material that was covered yesterday, and the
7 nature of the witness's knowledge about the specific winds
8 and specific locations has been explored at length.

9 MR. KAHN: And I'm not asking him about the nature
10 of specific winds, in the specific locations. I'm asking
11 him to point out Underwood Mountain. I did not question
12 about wind speed.

13 JUDGE WALLIS: What is the relevance of that?

14 MR. KAHN: To show it's tied into some of the maps
15 that are in evidence, and it's tied to both Mr. Cantrell's
16 questions about the ability to move some of the turbines
17 because of wind.

18 MR. PEEPLES: Your Honor, nobody mentioned that
19 mountain.

20 MR. KAHN: If I could have been allowed to ask the
21 question we would have been done five minutes ago.

22 JUDGE WALLIS: Very well. I believe that we are
23 getting off into an area here that is not shown to have
24 relevance to the elements of the project that the Council is
25 reviewing, and we'll rule that the question is not

1 appropriate. Does that conclude your examination?

2 MR. KAHN: You just said the questions weren't
3 appropriate so I guess it does.

4 JUDGE WALLIS: Very well. Mr. Spadaro, you are
5 excused from the stand unless the Applicant has further
6 questions.

7 MR. McMAHAN: No, Your Honor.

8 JUDGE WALLIS: Let's be off the record while
9 Ms. Chaney comes forward.

10 (Off the record.)

11 JUDGE WALLIS: Let's be back on the record on the
12 record, please.

13 The Applicant called Ms. Katy Chaney to the stand.
14 In conjunction with Ms. Chaney's appearance the Applicant
15 has submitted four documents: the testimony of Katy Chaney,
16 the resume of Katy Chaney, Certificate of Land Use
17 Consistency 2009-22, and Certificate of Land Use Consistency
18 2009-54 which are numbered Exhibits 2.00, 2.01, 2.02, 2.03
19 respectively.

20

21 KATY CHANEY,

22 having been first duly sworn on oath,

23 testified as follows:

24

25 ///

1 DIRECT EXAMINATION

2 BY MR. PEEPLES:

3 Q. Ms. Chaney, do you have in front of you Exhibit
4 No. 2.00 and the related attachments the Hearings Officer
5 just referred to?

6 A. Yes, I do.

7 Q. And that is your prefiled testimony?

8 A. Yes, it is.

9 Q. If I asked you the same questions in that document
10 and for those regarding those exhibits would your answers be
11 the same?

12 A. Yes, they would.

13 MR. PEEPLES: I move for admission of those
14 documents, Your Honor.

15 (Exhibit Nos. 2.00 through 2.03 offered into
16 evidence.)

17 JUDGE WALLIS: Is there objection?

18 Let the record show that there is no objection.
19 Those exhibits are received.

20 (Exhibit Nos. 2.00 through 2.03 admitted into
21 evidence.)

22 Is the witness available for cross-examination?

23 MR. PEEPLES: Yes, sir.

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. ARAMBURU:

3 Q. Ms. Chaney, I'm Richard Aramburu. We met yesterday
4 and I think we've met before in our respective history. Good
5 morning.

6 A. Good morning.

7 Q. Ms. Chaney, describe to me, if you would, what your
8 responsibility is with respect to this application.

9 A. I am the lead consultant. I work with the URS
10 Corporation, and I managed the preparation of the documents.
11 I managed the team of environmental scientists and
12 specialists in preparing the various technical sections, and
13 I was the overall technical editor for the document.

14 Q. So are you responsible for the actual text? When
15 you say the document you mean the application?

16 A. Yes, the application. I was the final editor of
17 the text, yes.

18 Q. I wanted to ask a couple questions about your
19 resume, if I may, which is Exhibit 2.01, and just a couple
20 questions if I may. On the first page of that document -- I
21 guess it is numbered -- it indicates you did environmental
22 due diligence for several Puget Sound Energy acquisitions of
23 wind projects; is that correct?

24 A. I was the principal in charge for URS for the due
25 diligence projects, yes.

1 Q. What did that due diligence consist of?

2 A. Review of previous studies, permits, compliance,
3 any kind of environmental documentation that's related to the
4 project, reviewing conditions that are required for various
5 conditions, for various permits to determine whether or not
6 the project had been constructed in compliance with those
7 depending on the status of the projects. Some of the
8 projects had not been built; some were in the middle of
9 construction.

10 Q. So as I understand it this was an actual
11 construction or management of an application for review of
12 ongoing work in anticipation of PSE's acquisition of those
13 projects?

14 A. Yes, it was primarily related to financial
15 transactions and purchasing of those projects.

16 Q. In the course of your work with PSE did you ever
17 have occasion to review PSE's proposal for the current
18 Whistling Ridge Project?

19 A. No, I did not.

20 Q. Turning to page 2 of your resume, Ms. Chaney, the
21 second item down is listing your project experience. It
22 indicates that you were involved in the Saddleback Mountain
23 Wind Project SEPA checklist and conditional use application.
24 Can you tell me what that was about?

25 A. Prior to the application to the Energy Facility

1 Site Evaluation Council the Applicant initiated proceedings
2 with Skamania County starting with a SEPA checklist and a
3 conditional use permit application for those portions of the
4 turbines that would require conditional use permit which is
5 primarily in the lower portion of the A-string.

6 Q. What was the time frame of that work?

7 A. Oh, I don't recall. Prior to 2008, maybe 2005,
8 maybe 2006.

9 Q. Was a complete SEPA checklist and conditional use
10 permit application prepared?

11 A. I know we had at least prepared a draft. I don't
12 recall if those documents were ever actually submitted to the
13 county.

14 Q. Did you consult with staff at Skamania County
15 concerning those projects?

16 A. I recall at least a pre-application process that
17 involved various departments at the county to determine what
18 they would want to see in the SEPA checklist and to get the
19 permit application for the conditional use permit.

20 Q. Did you recall meeting Ms. Witherspoon who is the
21 planning director for Skamania County?

22 A. Yes, at least in a pre-application conference, yes.

23 Q. How many pre-application conferences did you have?

24 A. I only recall one.

25 Q. At that time who were you working for?

1 A. SDS Lumber.

2 Q. At that time did you have any communications with
3 Puget Sound Energy regarding this project?

4 A. Not that I recall, no.

5 Q. Again, the time frame here is 2005 to 2006?

6 A. To the best of my recollection that was the time
7 frame.

8 Q. Can you tell me why the SEPA checklist and
9 conditional use permit application was not filed with
10 Skamania County?

11 A. I don't know whether or not -- I don't recall
12 whether or not they were actually filed, but the Applicant
13 Jason Spadaro decided instead of going through the county
14 process to go through the EFSEC process.

15 Q. Did you advise him to make that change?

16 A. No, I did not.

17 Q. Now, Ms. Chaney, you've been sort of in charge of
18 managing the various consultants on this project as I
19 understand, and can you tell me what the fundamental basis
20 was for this review; that is, was it for fifty 1.5 megawatt
21 turbines?

22 A. As has been testified to previously yesterday and
23 today we looked at a range of between 1.2 and 2.5 megawatt
24 turbines. The limit was 75 megawatts so obviously if you
25 have a larger turbine, you just do the math and divide the

1 number of turbines into 75, and you're going to get a fewer
2 number. So in each case for each element of the environment
3 we kind of looked at the worst case. So if you had more
4 turbines but using the higher heights, we used the higher
5 heights and 50 turbines, and for each element in the
6 environment we tried to find what would be the maximum noise,
7 what would be the maximum size in order to have a full range
8 of impacts.

9 Q. Did you direct Mr. Meier the geologist as to what
10 he should be siting?

11 A. Mr. Meier is a professional engineer licensed in
12 the state of Oregon and Washington, and I advised him in
13 terms of my capacity as a manager, but I didn't direct his
14 technical work.

15 Q. Did you advise him to prepare his work on the
16 geologic impacts and foundations based upon a 1.5-megawatt
17 turbine?

18 A. Each of the technical specialists in this project
19 were given the project description which again is the range,
20 and we're asked to consider what would be the maximum case or
21 the worst case for the purpose of their analysis.

22 Q. Did you recall what you told Mr. Meier to model?

23 A. Mr. Meier was given the same information that all
24 the technical people were which I just described to you.

25 Q. Did you write the geology section of this

1 application?

2 A. No, Mr. Meier did.

3 Q. You provided some information in the application
4 regarding employment, numbers of people working on the
5 project. Do you recall that?

6 A. Could you direct me to the section and page you're
7 talking about this, please.

8 Q. Well, for example, at page 12 of the application
9 you were talking about the number of -- well, actually on
10 page 11 and 12 you're talking about construction jobs on the
11 project.

12 MR. KAHN: Testimony.

13 MR. ARAMBURU: I meant to say testimony.

14 JUDGE WALLIS: I don't know what the pages are,
15 Mr. Aramburu. Can you be more specific.

16 MR. ARAMBURU: I was referring to her prefiled
17 testimony at pages 11 and 12. Thank you.

18 BY MR. ARAMBURU:

19 Q. Have you provided estimates of the number of
20 construction workers on the project?

21 A. I don't believe I provided the number. We were
22 given a number of construction workers based upon similar
23 sized projects, and then we used those numbers to evaluate
24 the impacts of that number of workers.

25 Q. Have they provided any information to you?

1 A. The Applicant and we also did research on other
2 projects such as Kittitas Valley and other projects that have
3 been built in Washington.

4 Q. Was that information based upon fifty, 1.5-megawatt
5 turbines?

6 A. I believe what we did was we looked at other
7 projects, and then we looked at if they were relevant to this
8 project, and then based on our experience in doing estimates
9 of construction workers and then evaluating them after the
10 project were actually under construction, we ratcheted those
11 numbers up or down relative to the size of this project.

12 Q. When did you learn that the Applicant had decided
13 to stipulate to 2-megawatt turbines for this project?

14 A. Yesterday morning.

15 Q. So you weren't informed before that?

16 A. I heard it in this hearing.

17 Q. You weren't told beforehand?

18 A. No.

19 Q. Would it be your testimony that the number of
20 construction workers would be more or less if thirty-eight
21 2-megawatt turbines were constructed as opposed to fifty
22 1.5-megawatt turbines?

23 A. I'm sorry. Would you repeat the question.

24 MR. ARAMBURU: Can read you that back.

25 (Last question read back.)

1 A. I don't know that it would be that much difference
2 because a lot of the construction work from a project like
3 this is doing the access roads, laying the cables, building
4 the operation and maintenance facility, building the
5 substation. So there's a number of things that wouldn't
6 change. I don't know exactly, you know, changing the number
7 of turbines from, you know, by 12 how many construction
8 workers that would actually affect.

9 Q. But it would probably be less, would it not?

10 A. I don't know.

11 Q. I would understand that there would be if the
12 number of turbines is reduced by 12 the number of foundations
13 necessary for those turbines would be reduced by 12. Can we
14 agree on that?

15 A. Yes, however those foundations may be larger so it
16 may take more of a crew to build that one foundation that was
17 a larger size than it would take to build two smaller sizes.
18 I don't know how those numbers really compare.

19 Q. Then what do you understand the nature of these
20 foundations to be about their size?

21 A. I don't know.

22 Q. I think the application says there is 60 feet in --
23 there's a hunk of concrete 60 feet in diameter and 30 feet
24 deep. Is that your recollection?

25 A. If you could point me to that page. I don't

1 recall.

2 Q. You don't recall. Okay. So you don't think there
3 would be less jobs created by reducing the number of turbine
4 foundations?

5 A. I don't know.

6 Q. Have you had a chance to review the decision of the
7 Hearing Examiner of Skamania County and her decision to
8 require an environmental impact statement for the proposed
9 zoning ordinance?

10 A. Was this one of the documents that you submitted
11 yesterday?

12 Q. Actually I submitted it sometime ago, but it's
13 Exhibit 1.17. I guess my question is have you ever had an
14 opportunity to review that before?

15 A. If it was in that package that you provided
16 yesterday, I did read through pretty quickly last night.

17 Q. Ms. Chaney, you provided some testimony regarding
18 the proposed zoning ordinance of the proposed changes to the
19 Skamania County zoning ordinance. Did you have any hand in
20 either writing or commenting on those changes?

21 A. No, I did not.

22 Q. Look at page 5 of your testimony, please, near the
23 bottom in your first bullet point at the bottom. I am going
24 to pause for a second and let the Council Members catch up
25 here. Page 5 of your testimony near the bottom of the first

1 two bullet points which says that this project meets siting
2 criteria of EFSEC because it is a commercially viable wind
3 renewable resource. Do you have that?

4 A. Yes, I do.

5 Q. What was the source of your information that it was
6 commercially viable wind resource?

7 A. The Applicant.

8 Q. Mr. Spadaro?

9 A. Yes.

10 Q. Anyone else?

11 A. No.

12 Q. Did you talk to Mr. Nierenberg, the wind person?

13 A. No, I did not.

14 Q. Have you ever talked to Mr. Nierenberg?

15 A. No, I have not met him.

16 Q. So the number of construction workers that you've
17 described in the application can you tell us what process you
18 went through to derive that number?

19 A. I believe I already answered that question. We
20 obtained information from the Applicant. We looked at other
21 similar projects to see how many construction workers and the
22 type of construction workers that were required.

23 Q. What were these other projects that you looked at?

24 A. Kittitas Valley, Desert Claim, Wild Horse, all of
25 the projects that have gone through EFSEC have that

1 information in their application, and it's all on the EFSEC
2 website so we looked at publicly available information.

3 Q. So you looked at application materials then.

4 A. Yes.

5 Q. Okay. And what Mr. Spadaro said.

6 A. Yes.

7 Q. What did Mr. Spadaro tell you about the number of
8 construction workers?

9 A. I don't recall. That was very early information
10 that we used and then we looked at these other things to kind
11 of come up with a number and then went back and said this is
12 what our best estimate is and he agreed with it.

13 Q. Looking at page 12 of your testimony, the first
14 question on the page which asks you where the construction
15 workers are expected to come from, and you indicate there
16 that 65 percent to 70 percent of the construction workforce
17 is likely to be hired from the Portland-Vancouver area. What
18 is your source for that information?

19 A. Actually my testimony is that it's an estimated 65
20 to 75 percent of the labor force. Partly that was in
21 discussion with Allen Barkley who was also working as a
22 consultant on the project.

23 Q. And who's Mr. Barkley?

24 A. Mr. Barkley is a consultant who's worked on
25 development of other wind projects.

1 Q. Then you say the remainder of the workers would be
2 residents from the three county areas; is that correct?

3 A. Yes.

4 Q. Did you reach any conclusions as to how many
5 workers would come from each of these counties?

6 A. You mean did we divide up among the three counties?

7 Q. Yes.

8 A. No, we did not.

9 Q. Would it be fair to divide up that workforce based
10 upon the population of each of these counties?

11 A. No, you'd have to look at what kind of labor force
12 was available to each one of those areas and what the
13 technical skills were.

14 Q. You made no inquiry in that regard?

15 A. No.

16 Q. You indicate also on page 12 of your testimony at
17 lines 18 to 20 that the total payroll cost for construction
18 in overhead would be 18 million dollars; is that correct?

19 A. Yes.

20 Q. What did you use as the average wage level for
21 those workers?

22 A. I think what we did was we looked at the total
23 cost, and I would remind the Council that the total costs are
24 not just the wages that are paid to the particular worker,
25 but they include all the fringe benefits, like your sick

1 leave, vacation, if there is any retirement, social security,
2 other things. So we looked at what the costs were on other
3 projects, looked at similar sized projects, and again went
4 over the numbers with Mr. Barkley and also with Mr. Spadaro.

5 Q. But did you estimate hourly wages?

6 A. No.

7 Q. So on page 13 of your testimony talks about the
8 permanent employment of the project, page 13, lines 7 through
9 15. Do you see that?

10 A. Yes.

11 Q. Who gave you the estimate for eight to nine
12 permanent workers?

13 A. Again, I think we developed that based on
14 information from Mr. Spadaro, Mr. Barkley, and then also
15 looking at similar sized projects and looked at current
16 information in terms of how many workers it was taking to run
17 projects such as wild horse and other projects in Washington.

18 Q. Is the number of operation workers proportional to
19 the size of the project?

20 A. Not necessarily.

21 Q. What would the variable be?

22 A. It still takes a certain number of personnel to run
23 an operation, to do maintenance. In some cases the
24 maintenance work is provided by temporary or kind of on-call
25 workers so you wouldn't have those on the permanent

1 workforce. I believe we factored in a number of part-time
2 workers, but it's still we have a minimum staffing to operate
3 a project 24 hours a day.

4 Q. So would it be fair to say your eight to nine is
5 FTEs, full-time equivalent?

6 A. Yes.

7 Q. Do you know where these eight to nine FTEs are
8 going to live?

9 A. We did discuss in the socioeconomic section, and we
10 anticipated that the full-time workers would live probably
11 within the three-county area, at most maybe would commute
12 from Washougal just to the west.

13 Q. So those are the individual decisions for workers?

14 A. Yes, they would.

15 Q. Did you explore the opportunity that the project
16 applicant may have to remotely monitor wind turbines?

17 A. No, did not.

18 Q. You have provided this Appendix E to your
19 testimony, the proposed zoning ordinance of Skamania County;
20 is that correct?

21 A. I don't see that attachment to my testimony. Are
22 you referring to the appendix to the application?

23 Q. I believe I was, yes, Appendix E.

24 A. I don't have a copy of that with me.

25 Q. Let me ask you about it. I don't know if you need

1 to look at a copy. Is it your understanding that that
2 ordinance has been adopted by Skamania County?

3 A. No.

4 Q. Can you tell me why it has not been adopted?

5 A. I only have peripheral information on that, but my
6 understanding is that the county was told that they needed to
7 prepare an environmental impact statement prior to the
8 adoption of that ordinance, and they have not done so yet.

9 Q. Do you know if that environmental impact statement
10 is in preparation by Skamania County?

11 A. I don't know.

12 MR. ARAMBURU: Thank you, Ms. Chaney. Those are
13 the questions that I have.

14 JUDGE WALLIS: Mr. Kahn.

15 CROSS-EXAMINATION

16 BY MR. KAHN:

17 Q. Ms. Chaney, could you turn to Exhibit 2.03 that was
18 attached to your testimony.

19 A. Yes, I have it.

20 Q. Can you identify that for us and tell us what it
21 is.

22 A. This is Resolution 2009-54, Certification of Land
23 Use Consistency Review for the amended application of
24 Whistling Ridge Wind Energy Project. This resolution appeals
25 Resolution 2009-22 in its entirety.

1 Q. Can you turn to the second page. You're aware I
2 assume that the Board of County Commissioners in Skamania
3 County adopted this certificate as a staff report to EFSEC
4 and not as a decision; is that correct?

5 A. Yes.

6 Q. At page 8 of your testimony you stated that
7 Skamania County had submitted a certificate of consistency
8 for this project; is that correct?

9 A. Yes.

10 Q. Specifically you referred to a letter dated May 4,
11 2009 from Karen Witherspoon?

12 A. Yes.

13 Q. That letter is in the record.

14 A. I believe it is attached to my testimony.

15 Q. Can you find it for me because I couldn't.

16 A. I believe it's what's labeled 2.02 of the
17 Resolution 2009-22, the attachment for that is a staff
18 report.

19 Q. You indicated there was a letter from Karen
20 Witherspoon. I don't see any letter from Karen Witherspoon
21 there. Am I missing something?

22 A. Let me check and see what I have. I have a copy of
23 a letter dated May 4, 2009 to Allen Fiksdal who was then the
24 manager of EFSEC.

25 Q. That's in the record?

1 A. Yes, it would be in EFSEC's records. It's a cover
2 to Resolution 2009-22.

3 Q. But that wasn't submitted as part of your exhibits
4 to your prefiled testimony; is that correct?

5 A. No, it was submitted as part of the land use
6 consistency hearing.

7 Q. So it's not in the record for this adjudication; is
8 that correct?

9 MR. McMAHAN: Your Honor, I would object to that.
10 I think that the Council is to determine whether or not the
11 land use consistency hearing is or is not part of this
12 record. That's a legal opinion that Ms. Chaney is asked to
13 make.

14 MR. KAHN: I believe the Council has already made
15 that determination; that the land use proceeding is not part
16 of this because you required us to try to resubmit all the
17 evidence that we submitted to that. I'm just trying to find
18 out if this is in the record to this proceeding.

19 JUDGE WALLIS: This is in the land use consistency
20 hearing record which will be considered by the Council in
21 making a decision in this matter.

22 MR. KAHN: Then may I ask then why in a previous
23 prehearing conference you indicated that documents submitted
24 at that hearing were not part of this record and that if we
25 wanted it to be considered, if we wanted those documents to

1 be considered by this Council in the adjudication, we need
2 to submit them separately? I would like to know which way
3 it is because we spent a lot of time trying to get those
4 exhibits in the record. If they already were we've wasted
5 that. So can you tell me if the documents that were
6 submitted to the record in the land use proceeding are part
7 of this adjudication record?

8 JUDGE WALLIS: My understanding is that they are
9 not a part of this adjudication record; however, they are
10 materials that will be considered by the Council in making
11 its final determination.

12 MR. KAHN: As part of the adjudication?

13 JUDGE WALLIS: The Council makes a decision on
14 whether or not to recommend a project to the Governor, and
15 in doing so it considers the adjudicative record, it
16 considers the land use consistency proceeding record, and it
17 considers the SEPA record.

18 MR. KAHN: This isn't a question. I'm just trying
19 to get it straight so we know what to do. If there's been a
20 document submitted at the land use hearing a year and a half
21 ago that is not submitted as part of this adjudication this
22 week and next week are we permitted to address that in our
23 post-hearing briefing?

24 JUDGE WALLIS: We have not determined the process
25 for post-record briefing, but my understanding is that the

1 Council wishes all parties the opportunity ultimately to
2 comment on and thereby address the final environmental
3 impact statement on the land use consistency determination
4 and the adjudicative record.

5 MR. KAHN: Okay. Maybe I'm being dense this
6 morning, but does that mean we can cite to documents in the
7 land use record that have not been submitted into this
8 record? I'm just trying to get it clarified.

9 JUDGE WALLIS: As part of the overall
10 determination, yes, it can be cited.

11 MR. KAHN: Okay. Thank you. Back to Ms. Chaney
12 now.

13 BY MR. KAHN:

14 Q. The May 4 letter that you referred to -- let me
15 withdraw that.

16 There were two Skamania County resolutions
17 pertaining to the consistency of this project with county
18 code; is that correct.

19 A. Yes.

20 Q. The May 4 letter that you referred to wasn't that
21 in connection with the first certificate?

22 A. Yes.

23 Q. Doesn't the second resolution specifically void the
24 first resolution?

25 A. It voids the resolution, yes.

1 Q. Do you have the rebuttal exhibits in front of you,
2 the ones from yesterday?

3 A. I do.

4 Q. Can you turn to 1.14c, please.

5 A. Sorry. They aren't immediately indexed so it is
6 going to take me a few minutes unless you have it.

7 Q. Would you like me to just give you a copy of that?

8 A. That would be great.

9 Q. It is much easier.

10 A. Thank you.

11 Q. Have you seen this document?

12 A. I saw it yesterday.

13 MR. McMAHAN: I'm sorry, Your Honor, just for a
14 second. We didn't get those nice cleaned up notebooks that
15 you have. Could you tell us what document that is.

16 MR. KAHN: It's an e-mail from Jessica Davenport.
17 I think it was number R from what we did yesterday.

18 Do you have it?

19 BY MR. KAHN:

20 Q. Can you read that, please.

21 A. You want me to read the text of the e-mail?

22 Q. The text not the to and from.

23 A. It's an e-mail to Nathan Baker from Jessica
24 Davenport who's the associate planner at Skamania County. It
25 says, "Nathan, attached is your latest request for public

1 information. I did double check with Karen regarding the
2 certificate of land use consistency referred to in Resolution
3 2009-54. It should have referred to the staff report. There
4 is not an additional document called the certificate of land
5 use consistency."

6 Q. So are you disagreeing then in your testimony on
7 page 8 when you were asked: "Has Skamania County provided a
8 certificate of land use consistency to EFSEC?" You answered:
9 "Yes." Are you disagreeing with Skamania County?

10 MR. McMAHAN: Your Honor, I'm going to object to
11 this. I have absolutely no idea what the nature of the
12 inquiry was that Ms. Davenport, an associate planner, was
13 responding to. This is not any communication from the Board
14 of County Commissioners. Mr. Pearce, the county commission,
15 adopted both resolutions at issue here. I just question the
16 relevance of this and it's activity not putting the whole
17 chain of correspondence before you.

18 MR. KAHN: Ms. Chaney testified that there was a
19 certificate of land use consistency. This is an e-mail that
20 say there isn't. It's from an official of Skamania County.
21 She's the assistant planner, and that's all I'm seeking to
22 introduce it for.

23 MS. DRUMMOND: Susan Drummond for Skamania County.
24 I am going to object as well because you can't tell what the
25 request is for the same reason Mr. McMahan states. There's

1 no way to tell what this response e-mail is to.

2 MR. KAHN: It's very clear. It says, "I did
3 double check with Karen" -- that's Ms. Witherspoon, the
4 planning director -- "regarding the certificate of land use
5 consistency referred to in Resolution 2009-54. There is not
6 an additional document called the certificate of land use
7 consistency." The history, whatever the e-mail string is,
8 is completely irrelevant. That's the only point that I'm
9 trying that make. This is completely relevant to the land
10 use portion of this proceeding.

11 JUDGE WALLIS: I'm going to allow the question.

12 MR. KAHN: Thank you, Your Honor.

13 BY MR. KAHN:

14 Q. So, Ms. Chaney, in light of this exhibit do you
15 contend that Skamania County is wrong when it says there is
16 not an additional document called a certificate of land use
17 consistency?

18 A. The way I read this e-mail -- again I didn't see
19 what the beginning correspondence was -- asked the question
20 of Karen Witherspoon that the certificate of land use
21 consistency referred to in Resolution 2009-54 was in fact an
22 additional certificate of land use or there was a staff
23 report. If you look at my attachment to Exhibit 2.03 to my
24 testimony, there's Resolution 2009-54 which is entitled
25 certification of land use consistency review for the amended

1 application for the Whistling Ridge Energy Project. This
2 resolution repeals Resolution 2009-22 in its entirety. So
3 the resolution is a certificate of land use and attached to
4 that is the staff report, and I think that's all that Jessica
5 Davenport was trying to clarify in her e-mail to Nathan
6 Baker.

7 Q. If I recall correctly your testimony, you indicated
8 that land use portions of the application were predominantly
9 your responsibility?

10 A. That is correct.

11 Q. So I assume you have some level of experience in
12 land use matters?

13 A. I do.

14 Q. Would you in your opinion would a certificate of
15 land use consistency be a decision of the body issuing it?

16 A. No.

17 Q. No, okay.

18 MR. KAHN: Your Honor, I have no further
19 questions, but I'd ask that Exhibit 114c be admitted.

20 JUDGE WALLIS: Is there objection?

21 MR. McMAHAN: The objection has previously been
22 stated, Your Honor.

23 JUDGE WALLIS: Very well. The exhibit is
24 received.

25 (Exhibit No. 1.14c admitted into evidence.)

1 MR. KAHN: Thank you. I have no further
2 questions.

3 JUDGE WALLIS: Mr. Marvin?

4 MR. MARVIN: I have no questions, Your Honor.

5 JUDGE WALLIS: Ms. Drummond?

6 MS. DRUMMOND: No, Your Honor.

7 JUDGE WALLIS: Redirect?

8 MR. McMAHAN: No, nothing Your Honor. Thank you.

9 JUDGE WALLIS: The witness is excused.
10 Let's be off the record.

11 (Discussion off the record.)

12 JUDGE WALLIS: Let's be back on the record,
13 please.

14 CHRIS WATSON,
15 having been first duly sworn on oath,
16 testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. McMAHAN:

20 Q. Mr. Watson, do you have in front of you what's been
21 marked Exhibit No. 8.00?

22 A. I do.

23 Q. As well as 8.01 which is your resume?

24 A. I do.

25 Q. Did you assist in preparing that testimony?

1 A. I did.

2 Q. Do you adopt that today as your testimony in this
3 proceeding?

4 A. I do.

5 Q. Do you have anything to change concerning that
6 testimony?

7 A. I have one change on page 7, line 4. It
8 incorrectly addresses the question to me and should be
9 addressed to my brother as you previously stated.

10 JUDGE WALLIS: Mr. Watson, as we proceed I'm going
11 to ask you to pull that microphone closer and move your
12 chair to the table. It is important for all of us in the
13 room to be able to hear.

14 THE WITNESS: I apologize, Your Honor.

15 BY MR. McMAHAN:

16 Q. In the unlikely event that you should be called
17 back up for cross-examination would you be available for
18 cross-examination?

19 A. Absolutely.

20 MR. McMAHAN: I have nothing further. I move for
21 admission.

22 (Exhibit Nos. 8.00 and 8.01 offered into
23 evidence.)

24 MR. KAHN: No objection.

25 (Exhibit Nos. 8.00 and 8.01 admitted into

1 evidence.)

2 MR. McMAHAN: Thank you, Chris. Have a nice day.

3 You want to proceed with Tom then?

4 JUDGE WALLIS: Is the other witness available?

5 MR. McMAHAN: Tom.

6 JUDGE WALLIS: It will take him some time to get
7 up here. Oh, he's on his way.

8 MR. McMAHAN: I understand that after we introduce
9 him, we will move to the break; is that correct?

10 JUDGE WALLIS: Yes.

11 TOM WATSON,

12 having been first duly sworn on oath,

13 testified as follows:

14

15 DIRECT EXAMINATION

16

17 BY MR. McMAHAN:

18 Q. Mr. Watson, do you have in front of you Exhibit No.
19 8.00?

20 A. I do.

21 Q. And the attachment of your resume which is also
22 8.02?

23 A. Yes.

24 Q. Do you adopt that testimony, Tom, as your testimony
25 for these proceedings?

1 A. With one minor caveat. There's a typo that I would
2 like to highlight on page 6 at the top of the third line down
3 where it says rather than just the 31 that should be 39 or if
4 you want to be more specific 39.6.

5 JUDGE WALLIS: Can you tell me what document
6 you're referring to?

7 THE WITNESS: This is my submitted testimony at
8 Exhibit 8.00.

9 MR. KAHN: And what page is that? Sorry.

10 THE WITNESS: Page 6.

11 MR. KAHN: Thank you.

12 BY MR. McMAHAN:

13 Q. So with that change do you adopt that as your
14 testimony?

15 A. Yes.

16 Q. Are you available for cross-examination concerning
17 that testimony?

18 A. Yes.

19 MR. McMAHAN: I would move to admit 8.00 with the
20 attachments.

21 (Exhibit Nos. 8.00 and 8.02 offered into
22 evidence.)

23 JUDGE WALLIS: Is there an objection?

24 MR. KAHN: No objection.

25 JUDGE WALLIS: The exhibit are received.

1 (Exhibit Nos. 8.00 and 8.02 admitted into
2 evidence.)

3 BY MR. McMAHAN:

4 Q. I believe you also have in front of you 8.03r with
5 a series of attached documents; is that correct?

6 A. Yes.

7 Q. Similar question. Do you adopt that as your
8 testimony?

9 A. Yes.

10 Q. And are you available for cross-examination
11 concerning it?

12 A. Yes.

13 MR. McMAHAN: Move to admit.

14 (Exhibit Nos. 8.03r through 8.10r offered into
15 evidence.)

16 MR. KAHN: No objection.

17 JUDGE WALLIS: The exhibits are received.

18 (Exhibit Nos. 8.03r through 8.10r admitted into
19 evidence.)

20 MR. McMAHAN: Thank you.

21 JUDGE WALLIS: Very well. Let's take our morning
22 recess at this time and come back at 10:20.

23 (Recess taken from 10:10 a.m. to 10:20 a.m.)

24 JUDGE WALLIS: Let's be back on the record,
25 please.

1 Prior to the recess Mr. Tom Watson was sworn and
2 his direct examination exhibits received. Mr. Watson is
3 ready for cross-examination.

4 CROSS-EXAMINATION

5 BY MR. KAHN:

6 Q. Mr. Watson, good morning.

7 A. Good morning.

8 Q. My name is Gary Kahn. I represent one of the
9 intervenors Friends of the Columbia Gorge. Are you a
10 landscape architect?

11 A. I am not.

12 Q. Do you have training in visual impact assessment
13 methodologies?

14 A. I do not, not formal training.

15 Q. Have you been trained in or studied any viewer
16 preference studies?

17 A. No.

18 Q. Your rebuttal testimony includes an extensive
19 discussion about visibility of the project through I-84. You
20 included a new exhibit 8.05r which I'm assuming may be one of
21 the documents that's going to up there which depicts the
22 location of trees along I-84, and your testimony discusses
23 how long the project would be visible in the gaps in the
24 trees while traveling along I-84 at 65 miles per hour. Is
25 that a fair summary?

1 A. Let me get to it.

2 JUDGE WALLIS: While the witness is searching,
3 Mr. Kahn, will you do two things for me. First is pull the
4 microphone, adjust the microphone so it is right in front of
5 you and speak into it, and the second thing is to talk a
6 little bit more slowly.

7 MR. KAHN: Both you and Ms. Linse will probably
8 have to remind me of that a few more times during the course
9 of this. I will certainly try.

10 JUDGE WALLIS: Thank you.

11 A. 8.05r shows visibility that is blocked by, masked
12 by structures and/or vegetation or terrain between the
13 highway and the project.

14 BY MR. KAHN:

15 Q. Your testimony focuses primarily on the viewing
16 experience of a person driving along I-84; is that correct?

17 A. That's correct, in either direction, showing both
18 directions there.

19 Q. You conclude in my words not in your words that
20 because they're driving they're going to be less prone to be
21 looking at the scenery.

22 A. Where are you referring to?

23 Q. I'm just sort of summarizing some of your
24 statement, not a specific quote.

25 A. Less prone to I don't remember saying that.

1 Q. But your testimony focused primarily on the driver
2 and the views of the driver; is that correct?

3 A. No, no, at any traveler on I-84.

4 Q. Including passengers in a vehicle?

5 A. Including passengers.

6 Q. Even if a driver's primary field of view that
7 focused forward would the driver capture movement in their
8 peripheral view?

9 A. Capture movement?

10 Q. Yes.

11 A. Yes, capture trees going.

12 Q. And turbine blades spinning?

13 A. If they're close enough to be able to focus in on
14 their peripheral vision.

15 Q. Exhibit 8.05r and 8.06r were intended to show
16 whether the project was screened for both topography and
17 vegetation. Is that a fair statement?

18 A. 8.05r and 8.06, yes.

19 MR. McMAHAN: Mr. Watson, if I could interrupt,
20 apparently all we need now is your code to log onto the
21 machine.

22 THE WITNESS: With your permission?

23 JUDGE WALLIS: I am going to suggest for any other
24 witnesses who have audiovisual presentations that we get a
25 set up in advance if at all possible so that when the

1 witness takes the stand we can begin the questioning. Are
2 we ready to proceed?

3 THE WITNESS: Yes.

4 BY MR. KAHN:

5 Q. Mr. Watson, can you tell us or run through the
6 exhibits you have on there so we will know what they are?

7 A. Sure. We have how to calculate the apparent size
8 of a 415-foot tall wind turbine at any distance in both
9 kilometers and miles. This might not be a big enough screen
10 for all of you to see it all on the screen, but we've got
11 kilometers across the top here, miles across the bottom. On
12 that side here -- you all have this exhibit also in our
13 testimony. It is Exhibit 8.07r so that you can see it
14 closer, and on the left side is the inches, the apparent
15 inches that it would be. So there's that one.

16 This one which is Exhibit 8.04r, 8.05r which is
17 the one we were just discussing, 8.06r which is the turbine
18 visibility from the Historic Columbia highway, and we've got
19 the panorama and film camera comparison from 50 mm camera.

20 MR. McMAHAN: Mr. Kahn, do you still have your
21 pointer?

22 MR. KAHN: Mr. Baker had it. He may have left
23 with it. I think Mr. Spadaro has it.

24 MR. McMAHAN: Sorry. Very sorry for the delay.
25 He did try to set it up during the break, but he wasn't

1 successful.

2 BY MR. KAHN:

3 Q. Mr. Watson, I just asked you whether Exhibits 805r
4 and 806r were intended to show whether the project was
5 screened with both topography and vegetation.

6 A. Topography and vegetation, that's correct.

7 Q. Does the Applicant have control over screening
8 vegetation along I-84?

9 A. No.

10 Q. Does the Applicant have control over screening
11 vegetation along the start of the Columbia River Highway in
12 between Hood River and Mosier or in fact anywhere off of the
13 Applicant's property?

14 A. No.

15 Q. So is it fair to say that the Applicant cannot
16 ensure that the trees that you indicate will screen the
17 turbines from view will not remain there forever?

18 A. I think it's highly unlikely that any of those
19 areas will be clearcut between now and I-84 at least or along
20 the Columbia River Highway. It's unlikely those trees will
21 be cut. There will be natural growth and death of the
22 vegetation along those areas, but that net impact would in my
23 opinion be nil.

24 Q. What is your basis for saying it's highly unlikely
25 that trees will be cut along I-84 and the Historic Columbia

1 River Highway? Are you familiar with the management plans
2 for those roads?

3 A. No, I'm not.

4 Q. So you have no idea whether they have along those
5 roads; is that correct?

6 A. That's true. They could be cut.

7 Q. There could also be say a wind storm that would
8 knock down the screen of vegetation?

9 A. Yes.

10 Q. As well as fires?

11 A. As it is very likely that after those events that
12 that screening of vegetation would regrow and more would grow
13 up in places where it currently isn't right now.

14 Q. But it would take a while if there's a wind storm
15 or a fire, it would take a while before the vegetation would
16 regrow to the point where it was prior; is that fair?

17 A. That is fair.

18 Q. In your rebuttal at the end of page 3 and the
19 beginning of page 4 you discuss Exhibit 807r which is a graph
20 that you showed us that shows the apparent heights of a
21 415-foot tall turbine and various distances from the viewer.
22 Correct?

23 A. Which one?

24 Q. 807r on your graph.

25 A. That one?

1 Q. Yeah, that one.

2 A. Yes. What is your question?

3 Q. Just whether that was the point of 807r that it
4 shows the apparent height of a 415-foot tall turbine at
5 various distances from the viewer?

6 A. That is correct. So basically if you were to hold
7 your fingers out in front of you or a ruler or any other
8 object, it shows what the size of that object would be two
9 feet in front of your eyes as you were looking at the site
10 from that distance.

11 Q. That's referred to apparent height in professional
12 terms?

13 A. Yes, that's apparent height from that distance.

14 Q. Can you explain how apparent height translates into
15 visual impacts?

16 A. Visual impacts is not something that I evaluate or
17 cover. That is Dautis Pearson's testimony.

18 Q. Is it fair to say even small objects can have a
19 high contrast with the surroundings?

20 A. It depends on a lot of factors.

21 Q. Do you know the apparent diameter of a full moon?

22 A. No, I don't know that in my head.

23 Q. Do you know the apparent size of an FAA aviation
24 safety light at a distance of ten miles?

25 A. Well, you can extrapolate it from that graph if you

1 want to go to that trouble. It is very small in comparison
2 to at ten miles. At ten miles you're talking about the full
3 height turbine itself is about .02 inches tall and so that
4 miniscule little light on top of the hub what its dimensions
5 would be at that ten miles I don't know.

6 Q. If there were dozen turbines with safely lights on
7 them at ten miles, do you believe that those lights will be
8 visible from ten miles away?

9 A. In the dark?

10 Q. Yes.

11 A. Yes.

12 Q. And five miles away?

13 A. Yes.

14 Q. Even though at ten miles away it at I believe you
15 said .02 inches it would still be visible from ten miles
16 away?

17 A. The turbines at .02 inches, that's correct.

18 Q. How important is color in assessing visual impacts?

19 A. It is very important because it's a key factor in
20 assessing contrast.

21 Q. Does the color white, which I realize is the
22 absence of color, but does that generally make an object
23 larger or smaller or appear larger or smaller?

24 A. It would depend on what the background is.

25 Q. Say the background that we have on the project?

1 A. It's different for almost every viewpoint.

2 Q. Tell me what makes the difference. What factors
3 you would use to answer that question?

4 A. Whether or not it is solid trees behind it or
5 whether or not it's bare hillside, whether or not it's sky,
6 whether or not it is rocks.

7 Q. Depending on the answer to those questions that
8 would determine whether a color, whether a light object would
9 appear large or small?

10 A. Yes, the contrast between the two.

11 Q. Are there any natural objects in the project area
12 that are white?

13 A. In the project area not that I'm aware of.

14 Q. I'm sorry. Were you finished?

15 A. Not that I'm aware of at this time.

16 Q. What are the dominant colors in the project area?

17 A. Greens and browns and grays and beige, grass
18 colors.

19 Q. Would a large white object such as a 415 or 426
20 foot high turbine placed on a green, brown grass colored
21 landscape that you just mentioned, would that blend in or
22 would it contrast?

23 A. It depends on the lighting, and that's a very
24 subjective situation based on the time of day of the lighting
25 and what kind of colors are all around it.

1 Q. Well, I'm talking about you indicated that if you
2 had a --

3 A. A solid green background with a white object on
4 that it would be definitely contrast.

5 Q. When you say it depends on the lighting can you
6 explain what you mean, please.

7 A. Well, different times of the day the sun is in a
8 different position and, for example, when the sun is behind
9 the turbine in relation to the camera or the viewer, the
10 turbine will be in its own shadow. So even a white turbine
11 will appear to be gray or dark color, and that will
12 definitely change the level of contrast that would be
13 observed by a camera or an observer. So lighting is a
14 critical factor in the contrast.

15 Q. To the extent that the white turbine would create
16 contrast is it fair to say that multiple turbines would
17 increase that contrast?

18 A. If you're counting quantity multiple more than one,
19 then I suppose, yes.

20 Q. Are you familiar with the concept of visual
21 density?

22 A. Vaguely, not in great detail.

23 Q. Are you familiar enough with it to explain what it
24 is?

25 A. No, not to -- that is not my area of expertise.

1 Q. At what distance do the textural features of
2 vegetation lose their distinctive appearance?

3 A. It depends on which textural features, how big of a
4 feature are you talking about? Whether you're talking about
5 branches, are you talking about leaves, or are you talking
6 about the texture of bark?

7 Q. Fair enough. Let's take each one of those.
8 Leaves? At what distance do the textural features of leaves
9 lose their distinctive appearance?

10 A. I don't know. I could make a guess.

11 Q. What about bark on a tree trunk?

12 A. Within about 50 feet.

13 Q. Exhibit 808r is a reformatted visual simulation
14 that you submitted with your rebuttal testimony; is that
15 correct?

16 A. That's correct.

17 Q. You also provided some additional explanation of
18 how those exhibits were prepared in your testimony?

19 A. Yes.

20 Q. Would you agree that the goal of the simulations is
21 to provide the most realistic representation of how the
22 project would look to a person standing on the ground at a
23 particular viewpoint?

24 A. That's right, as complete as possible.

25 Q. So if the project is built is it fair to say that a

1 person should be able to go to that viewpoint, hold up the
2 simulation, and they will see the same picture as far as the
3 apparent size of the turbines?

4 A. Yes, if the turbines are placed in the same place.

5 Q. Given the testimony earlier we don't know where
6 these turbines are going to be placed, do we?

7 A. We know their approximation, and these are very
8 good representations of the worst-case scenario for those
9 approximations.

10 Q. Do you have rebuttal exhibits in front of you?

11 A. I do if you're speaking of my exhibits.

12 Q. No, I'm sorry. The exhibits that we produced
13 yesterday.

14 A. I do not have them all. Which one are you
15 referring to?

16 Q. Specifically it is 8.16c which in our original
17 yesterday it was -- it was the visual issue paper.

18 A. I do have the visual issue paper.

19 Q. If you could turn to that, please.

20 A. In this visual issue paper I would like to comment
21 on this.

22 Q. I'm sorry. I haven't asked you the question. The
23 visual issue paper has various techniques that are used in
24 generating visual simulations and how those techniques can
25 create dramatically different impressions in scenic impacts;

1 is that fair?

2 A. It's fair, but it's one man's opinion on how a lot
3 of those things work. I was given this paper yesterday for
4 the first time, and I spent a couple hours on it last night
5 between 12:00 and 2:00 in the morning reviewing it, and I
6 found it to be an extended editorial of one man's opinion
7 paper, and it is not an authority paper. It is not a
8 standard documents. What I found -- in fact, I'd like to
9 give you some examples because this should not be viewed as a
10 an authority.

11 MR. KAHN: I'd ask that the witness respond to my
12 questions and not pontificate.

13 JUDGE WALLIS: Yes, Mr. Watson --

14 A. What is your question?

15 JUDGE WALLIS: -- on cross-examination counsel
16 will have the opportunity to redirect the witness.

17 BY MR. KAHN:

18 Q. Could you turn your attention to page 4 of that
19 document, please.

20 A. Yes.

21 Q. Okay. Does that page provide a diagram of how
22 using composite panoramics would have the effect of moving
23 simulated turbines further into the distance than they
24 appear? Actually page 6. I'm sorry, Page 6.

25 A. If you zoom something in or zoom it out, it's going

1 to look further or closer. That's something that I think
2 that everybody knows by common sense. In this case if it was
3 printed on the same size, something then was zoomed out, then
4 it will look smaller or more distant. So that the key is to
5 know what the absolute values are which is very useful to use
6 what we've given you here, as well as to know what the
7 printed size is which was also giving simulations of what
8 distance that you would have.

9 Q. If you look at page 6, does it indicate that both
10 the upper picture, which is the panoramic view and the lower
11 view which is the single printing view, were taken from
12 exactly the same viewpoint using the same lens?

13 A. No, it doesn't. Not the same focal length. If you
14 look one has a completely different view than the other
15 horizontally and vertically.

16 Q. When you say focal length, you will have to forgive
17 me because I am not at all conversant in photography words.
18 Is that referring to the size of the lens, the 50 mm?

19 A. Right, 50 mm, 35 mm, 75 mm.

20 Q. So you're saying, your opinion is that these
21 pictures were taken with different length lenses?

22 A. No, I'm not saying that. It could be taken a bunch
23 of different ways. It can be taken with the same lens but
24 stitched together and then cropped could achieve that, or you
25 could take a wide angle lens and just compare it laterally to

1 a lower focal lens.

2 Q. So you completely disagree with this statement here
3 that composite of the same viewpoints will show objects
4 appearing further away than a single frame shot would do?

5 A. Let me explain the way this works. If you print
6 them both on the same print on a wide field of view on the
7 same size paper as a narrow field of view, then the wide
8 field of view will look further away than the narrow field of
9 view. So if you were looking for a panorama, then you need
10 to print it on a larger size in order to be able to see
11 everything.

12 Q. So if I'm standing at the viewpoint from which this
13 picture is taken and I'm looking in the direction to where
14 these turbines are, which of these two pictures is going to
15 accurately represent what I'm going to see?

16 A. More accurately?

17 Q. Yes.

18 A. Well, the human field of view is up to about
19 180 degrees. You can check that out yourself by just moving
20 your arms out to your side and you can see your hands while
21 looking straight ahead. And so the most complete field of
22 view would be one that approaches. There are caveats or
23 tradeoffs when doing that, but that is definitely far more
24 representative of the human field of view. And the question
25 comes in more what size you're going to display the image at.

1 It's really very simple. This goes back on this
2 very same with the 50 mm lens which is about 39 degrees
3 which is going to be more valuable to you in evaluating the
4 viewpoint, you know, a little tiny box 39.6 degrees wide or
5 a much wider view as it is an easy, common sense approach
6 that you can take and decide which gives you a better
7 perspective of the context of that view.

8 Q. But if the viewer is focused on a specific
9 direction and not concerned about the 180-degree field of
10 vision would the lower picture be more representative of the
11 size of the objects in that situation?

12 A. More representative of the size?

13 Q. Yes.

14 A. That's completely arbitrary. It depends on the
15 size that it was printed on and the size of the page. If you
16 lose context, then you're giving up information that is
17 valuable for deciding what it's going to look like and
18 whether it's establishing the relative size. Now these
19 pictures are also not very good comparisons in the type of
20 terrain that we deal with here, which is high-relief terrain
21 which has a lot of factors that let you know that you're
22 familiar with the hills around, and you have a lot of things
23 that show you, indicators that show you what the relative
24 sizes that you see. You see turbines up next to trees,
25 turbines right next to Douglas Firs, and you can get an

1 approximation of how massive they are.

2 But in the end the most valuable use of these is
3 in looking at an existing viewpoint, an existing
4 perspective, and then comparing that against what it is
5 going to look like after it's built and get as complete a
6 view of that viewpoint which mean it's a wide field of view
7 and print it in a large enough size that you can see it
8 clearly and then compare what it looks like before it is
9 built.

10 Q. Even with the wide field of view isn't it true that
11 the viewer's eyes are going to be drawn to the dominant
12 objects in that field of view?

13 A. Yes, the dominant objects in our case here is all
14 sorts of things. If you're really close then the dominant
15 object could be a turbine, but if you're further away from
16 the dominant object typically mountains and hills.

17 Q. If there are turbines in that field of view that
18 are spinning isn't that likely to draw the viewer's eyes?

19 A. If you're close enough to see the turbine, if
20 you're close enough to see that motion which can be very
21 difficult if, you know, you're far enough away to the
22 apparent height that you're looking at a quarter of an inch.

23 Q. At page 9 of your rebuttal starting at line 20 and
24 onto page 10, you concede that the apparent size of the
25 turbines in many of the simulations is much smaller than they

1 would appear in real life; is that true?

2 A. Page 9?

3 Q. Page 9 and then on page 10.

4 MR. McMAHAN: Your Honor, I'm sorry. Of the
5 rebuttal testimony or original testimony?

6 MR. KAHN: Rebuttal.

7 A. Where are you reading so I can get to where you're
8 going?

9 BY MR. KAHN:

10 Q. I will try to find these accurately. I will
11 withdraw that question.

12 At page 11 and 12 of your rebuttal testimony, you
13 respond to Mr. Apostol's observation that turbines have the
14 potential to cause substantial scenic impacts even when
15 viewed at more than ten miles away. Is that true? Do you
16 criticize that?

17 A. Let me turn -- at the bottom, yes.

18 Q. You responded that at distances over five miles
19 turbines have a small apparent size and at over ten miles the
20 apparent size can allow turbines to blend into the
21 surrounding landscape; is that correct?

22 A. Yes, that's a common sense angle anybody here can
23 experience.

24 Q. Isn't it also the case that turbines can still be
25 seen at a distance of ten miles?

1 A. If it's clear and it is not too hazy of a day.
2 They can considerably disappear even at five miles if it's a
3 very hazy day which are frequent here in the Gorge.

4 Q. As are sunny days. Correct?

5 A. Yes, partly sunny days.

6 Q. Depending on the nature of the view and the
7 atmospheric conditions that you just mentioned is it true
8 that turbines with their spinning blades may still contrast
9 highly at a distance of ten miles?

10 A. I don't know what your definition of contrast
11 highly is. That's a subjective measure. You would have to
12 define that for me.

13 Q. Is it true that turbines with spinning blades will
14 still contrast, will create contrast in the landscape?

15 A. It could be contrasted depending on the lighting
16 situation, depending upon the time of day where the shadows
17 are, what the background will be behind the turbines. So
18 you're speaking about ten miles distant turbines which are
19 extremely small at that distance, and so it's going to have
20 to be ideal conditions to have very much contrast at all.

21 Q. But under those conditions there will be contrast.

22 A. As I said, it depends on the lighting conditions.
23 It depends on haze.

24 Q. So Mr. Apostol said that turbines can have
25 potentially substantial impacts at a distance over ten miles

1 if conditions are right. That's consistent with what you're
2 saying, isn't it?

3 A. Can potentially have impacts?

4 Q. Yes.

5 A. Again, you have to define for me exactly what
6 conditions he's speaking of. In my opinion what I have seen
7 when looking from any of these viewpoints that I've had
8 distant objects at ten miles from the viewpoints that are at
9 that distance trees and features on the terrain are extremely
10 small.

11 Q. So it's your testimony then that even under ideal
12 atmospheric conditions turbines will not have any impact to
13 the view from a distance of ten miles. Is that your personal
14 testimony, your personal opinion?

15 A. No, it is not.

16 Q. I thought that's what you just said. Can you
17 please correct me.

18 A. I said it depends on all conditions. You're
19 setting up a hypothetical without giving me the details.

20 Q. In the most ideal of conditions.

21 A. Ideal meaning the light was at the most high
22 contrast?

23 Q. Yes.

24 A. That is possible.

25 Q. In your opinion at what distance are wind turbines

1 clearly visible absent intervening topography or vegetation?

2 A. Clearly visible? It would depend on so many other
3 factors. It depends on the contrast. It depends on the
4 lighting. It depends on if there is no obscuring terrain or
5 vegetation.

6 Q. And I excluded those. Do you have an opinion as to
7 the maximum distance that under ideal conditions that people
8 could still see the blades spinning?

9 A. Somewhere between 10 and 20 miles -- no, somewhere
10 between 10 and 15 miles at the most.

11 Q. I want to make sure I understand.

12 A. Under extreme ideal conditions which I don't think
13 you're going to see very often.

14 Q. Do you have any idea as to what distance wind
15 research indicates that turbines become visually indistinct?
16 Would it be beyond 10 or 15 miles that you just mentioned?

17 A. Which wind research? Can you point me to that
18 document?

19 Q. No, I can't. I'm just asking you in general if
20 you're aware of that.

21 A. I'm not familiar with any document that specifies
22 that.

23 Q. At page 11 of your rebuttal testimony your response
24 to Mr. Apostol's contention that animated simulations would
25 be helpful in evaluating impacts, can you explain, first of

1 all, what animated simulation is?

2 A. An animated simulation to where you show the actual
3 turbine blades turn in the simulation, and/or you can also
4 show a moving camera in relation to the simulation.

5 Q. Do you agree with Mr. Apostol --

6 A. It has to be on a computer.

7 Q. Do you agree with Mr. Apostol that animations are
8 useful in some situations?

9 A. They can but they tend to overstate impacts and not
10 give a clear --

11 Q. Why not?

12 A. Well, because typically you're not standing still,
13 and the simulation is where you're standing at one place.
14 You're looking at a computer screen with a wind turbine
15 turning which is not a good comparison to the types of KVAs
16 that we are evaluating here which usually you are not
17 standing in one place deciding what it looks like when it's
18 turning. You're moving in a vehicle.

19 Q. What if you're not in a vehicle?

20 A. If you're not in a vehicle? What is your question?

21 Q. Well, would animated use be helpful use for someone
22 assessing views from the Columbia River? I'm sorry. Would
23 an animated simulation be helpful to assess the views from
24 the Columbia River if you're right on the shore or in a boat
25 that's anchored where you're not moving?

1 A. Helpful in what way?

2 Q. To determining the scenic area impact from placing
3 turbines in the view shed.

4 A. It could be useful, but it would have to be, it
5 would tend to be as I say overstate the impact.

6 Q. Again, you'll have to forgive me because I'm not
7 anywhere close to an expert in this field, but how does it
8 overstate the impact?

9 A. Because in most cases you're not standing still
10 looking at one thing.

11 Q. In the National Scenic Area -- are you familiar at
12 all with the key viewing areas in the National Scenic Area?

13 A. Which key viewing areas?

14 Q. In general. Are you familiar with the concept of
15 the key viewing areas within the National Scenic Area?

16 A. Only in terms of what we've modeled for this
17 project.

18 Q. Is it your understanding that some of the KVAs (key
19 viewing areas) are corridors like I-84 and the river?

20 A. I think that's really a misapplication of the words
21 because they are very spotty as you see in our various
22 figures. You can see that in the example of that in the
23 first --

24 Q. But that's not my question. I'm just asking you if
25 are aware that some of the key viewing areas designated by

1 the Columbia River Gorge Commission and the U.S. Forest
2 Services are corridors like I-84 and the river; is that
3 correct?

4 A. Yes.

5 Q. And many others are specific points. Correct?

6 A. Yes.

7 Q. Now somebody at one of those key viewing areas that
8 is at a specific point as opposed to a corridor, they're not
9 going to be moving, are they?

10 A. No.

11 Q. So in that scenario wouldn't an animated simulation
12 be helpful to determine the impact on the viewer from that
13 location?

14 A. It could be.

15 Q. The same would be true in any given point from
16 which the turbines could be visible; is that correct?

17 A. At any given point where a person would be standing
18 still which in most of these corridors is very rare. You're
19 not going to have people standing still on I-84 because
20 they're moving at 65 miles an hour, and there's very little
21 reason to stop on the shoulder of the road to decide what a
22 moving turbine would look like.

23 Same thing if you're moving on the river it's a
24 corridor. Same thing if you're hiking along the Historic
25 Columbia River Highway you could certainly stop there, but's

1 it's very unlikely in the other corridors.

2 Q. But in all the key viewing areas that are points,
3 not corridors, people aren't going to be moving, are they?

4 A. Like if a person was at a park?

5 Q. Right.

6 A. That's possible.

7 Q. In fact, are you aware of the plans of the Historic
8 Columbia River Highway Commission to reconnect and join many
9 of the distinct parks of the Old Highway?

10 A. I have reviewed them.

11 Q. Do people generally notice movement in their
12 peripheral vision?

13 A. They can if it is close enough.

14 Q. At page 13, line 1 of your rebuttal, you state that
15 people traveling along I-84 would have to look at 90 degrees
16 of the direction traveled to notice the views of the Gorge
17 from that stretch of highway. Is that a fair assessment?

18 A. Where are you looking?

19 Q. Page 13 at the very top.

20 A. This is in response to just the area within three
21 miles of the project where the corridor is at a 90-degree
22 angle perpendicular to the view assigned.

23 Q. Much easier for a passenger in the car to look at a
24 90-degree angle rather than the driver; is that correct?

25 A. Yes.

1 Q. Is it fair to say that the wind industry in general
2 has invested a substantial effort to create simulation
3 systems that include spinning blades? Are you familiar with
4 that?

5 A. Yes.

6 Q. Is that a program that's been called WindPro?

7 A. Yes.

8 Q. And that's used to simulate views?

9 A. It is.

10 Q. Also on page 13 of your rebuttal testimony you
11 conducted an additional analysis of the view duration for
12 people traveling along I-84 at 65 miles an hour; is that
13 correct?

14 A. Yes.

15 Q. What did you conclude the view duration in the
16 worst scenario? It would be Mitchell Point.

17 A. The view duration?

18 Q. Yes.

19 A. About 38 seconds.

20 Q. Do you know what the Federal Highway Administration
21 considers a long-duration view?

22 A. I don't.

23 Q. Do you know what the Forest Service considers a
24 long-duration view?

25 A. No.

1 Q. Would it surprise you if you were to learn that the
2 Highway Administration says anything over 16 seconds is a
3 long-duration view?

4 A. No, I'm not familiar with their things. I just use
5 common sense. Thirty-eight seconds doesn't seem like a long
6 time to me.

7 Q. Would it surprise you to know that the Forest
8 Service considers 10 seconds a long-duration view?

9 A. Yes.

10 Q. So you would disagree with those?

11 A. I didn't disagree with them. I think I said I
12 would be surprised.

13 Q. Do you believe 10 seconds is a long duration view?

14 A. No, I don't think that -- not to me.

15 Q. So you disagree with the --

16 A. I don't know what standards they're using to
17 establish, to decide on what they consider a long-duration
18 view.

19 Q. The length of time. We're talking about the length
20 of time alone.

21 A. I know, but why are they calling it a long-duration
22 view? It seems rather subjective to me.

23 Q. So your opinion as to what's long or short is also
24 subjective?

25 A. It is just based on common sense.

1 Q. So there is no consistent methodology that's used
2 for that?

3 A. Consistent methodology for what?

4 Q. To determine what a long-duration view is. You're
5 saying it's subjective and common sense. Does that mean
6 everybody is going to have their own opinion and there's
7 nothing that's used that's any kind of standard in the field?

8 A. You just pointed out two standards that were
9 established by two different agencies.

10 Q. And you disagree with both of them; is that
11 correct?

12 A. I disagree intuitively. I think that 38 seconds --
13 to me a long-duration view would be 2 minutes, 5 minutes, 10
14 minutes, but it is all relative.

15 Q. At pages 13, 14, and 15 of your rebuttal testimony
16 you discuss a variety of reasons why simulations were not
17 prepared for views within three miles of the project along
18 I-84 in the Columbia River; is that correct?

19 A. Let me review the question.

20 Q. Please.

21 A. Yes, that is the gist.

22 Q. The gist of it was -- what was the reason, the
23 summary why those simulations were not prepared?

24 A. What simulations were not prepared?

25 Q. Well, you discussed a variety of reasons why

1 simulations were not prepared within three miles of the
2 project. Summarize those reasons for us.

3 A. Because we have the most -- the most substantial
4 impacts happen at Viento Park and the location that we've
5 identified on I-84 eastbound, and the views that you see
6 between those two points are far less substantial in terms of
7 numbers of turbines and in terms of the number of turbines
8 that are visible. So we have to choose what are going to be
9 the highest impact or worst-case scenarios, and those
10 locations were located at these two locations.

11 Q. So in your opinion it is not important to determine
12 the view from a kayaker on the Columbia River within three
13 miles of the project site if the turbines are visible?
14 That's not an important enough location to do the simulation?

15 A. As indicated in my testimony there are very few as
16 you can see. You might want to look at your example of this,
17 this figure here, Exhibit 8.04. There is very little
18 visibility. In other words, one to five turbines are visible
19 within this three miles. This is the three-mile range ring
20 here, and it's very difficult to see in this size overhead.
21 But if you look at your Exhibit 8.04r and look at the
22 three-mile range ring, you can see that there's very little
23 visibility on the Columbia River, and what there is, is
24 between one and five turbines right up against the southern
25 bank that would be visible in part to set kayaker along that

1 bank.

2 Q. Okay. Do you have the application in front of you?

3 A. I don't have a full application in front of me.

4 JUDGE WALLIS: Let me interject just for a moment
5 here and ask the witness as you're giving your testimony,
6 you're referring to the map which is on the screen. People
7 who are reading the testimony will not be able to see the
8 pointer so you need to be very specific in terms of what
9 you're referring to.

10 A. Okay. So anyway to recap my testimony is that
11 within that three-mile ring there's a two-and-a-half mile
12 stretch along I-84 that is within that two-mile ring and even
13 less -- well, approximately the same amount along the bank of
14 the Columbia River, and in that entire stretch within three
15 miles there is very little visibility to the project site
16 then because the nature of the terrain which comes to a
17 shoulder on the north side between the project site and the
18 back of the Columbia River, and so it blocks visibility
19 completely from the majority of that section of the Columbia
20 River.

21 BY MR. KAHN:

22 Q. You said a moment ago if I heard you correctly that
23 there were a small number of turbines along the stretch
24 between Viento Park and Hood River. Did I hear that
25 correctly?

1 A. Smallness, decreasing number of turbines visible
2 between the viewpoint at Viento and the viewpoint on Highway
3 I-84 eastbound or its approximation along the Columbia River.

4 Q. I notice Ms. Chaney just gave you the application.
5 Could you turn to page 4.2-35, please, or actually it would
6 be the map following 4.2-34.

7 A. Okay. I am looking at Figure 4.2.5.

8 Q. Yes, I'll have a couple questions on that. In your
9 rebuttal testimony at page 16 and then going onto 17 you
10 explain why no simulation was prepared for the Historic
11 Highway at Mitchell Point to Ruthton Point; is that correct?

12 A. I would have to look at those pages to concur with
13 you. You said page 16 of the rebuttal?

14 Q. Yes, starting at line 14 and then continuing on
15 through page 17.

16 A. Yes, Ruthton Point.

17 Q. And Mitchell Point.

18 A. And Mitchell Point.

19 Q. You state one reason that Mitchell Point was not
20 selected because there's only two or three turbines would be
21 visible from that point; is that correct?

22 A. That is correct. It is not a substantial
23 visibility location --

24 Q. If you look at --

25 A. -- compared to the others.

1 Q. If you look at Figure 4.2.5 in front of you, could
2 you use -- that's not up there. It appears -- do you know
3 where Mitchell Point is located on that exhibit on 4.2.5?

4 A. On 4.2.5 I would have to cross-reference it with a
5 more detailed map. That is Ruthton Point is just about a
6 quarter inch to the left of I-84, the I-84 labeled there.
7 Mitchell Point this map is not detailed enough to show
8 exactly where Mitchell Point is.

9 Q. This is a map that's color coded to show the number
10 of turbines that would be visible from any given area on this
11 map. Is that fair to say?

12 A. That is fair to say.

13 Q. As I look at the corridors of I-84 in -- let me
14 give you a -- you have to make some assumptions. Do you see
15 on the north side of the river where the No. 14 is on State
16 Route 14 on the center of this?

17 A. Yes.

18 Q. Mitchell Point would be virtually directly across
19 the river from there. Is that consistent with your
20 understanding?

21 A. I would have to look it up on one of the larger
22 maps and compare it.

23 Q. Please do so if you can.

24 A. It looks to me like it is just a little bit west of
25 that location across the river.

1 Q. Okay. That's consistent with my understanding.
2 And as I look at this it looks like that section of I-84 is
3 in the color code that shows more than one to five turbines
4 being available or visible. Am I wrong?

5 A. The difference between this figure and the figure
6 up here is that this figure is terrain only. The only thing
7 that was taken into account was the terrain, the USGS digital
8 elevation maps which show the terrain. In addition what
9 makes this map much more useful is it also includes 2010
10 identified area of the top, from the area at the top
11 vegetation and intervening ridge lines, that is trees.
12 Finally it has firs on the ridge lines in between with some
13 assumed to be at 100 feet tall where they're more visible in
14 the 2010 aerial photos as mature stands of trees and then
15 definitely tend to mask the visibility to the site in
16 addition to the terrain. So it is more complete.

17 Q. The vegetation that you're referring to that makes
18 it a more complete simulation is that public or private land?

19 A. It's mixed.

20 Q. And completely capable of being harvested.
21 Correct?

22 A. I don't know the details of the ownership of each
23 of those properties so I can't comment on that. Where it is
24 private land definitely.

25 Q. But no guarantees that that vegetation that screens

1 those turbines from Mitchell Point will be there tomorrow,
2 next week, next month, next year. Correct?

3 A. No, but when it is gone it will probably return and
4 the natural cycle of vegetation, those trees are harvested
5 and then regrown.

6 Q. And small to large. You referred a moment ago to a
7 hundred foot tall trees. How long does it take for either a
8 natural regenerated tree or a sapling planted to reach a
9 hundred feet?

10 A. I would refer to Dautis on that for exact numbers
11 or to any of the lumber experts.

12 Q. What is the life of this project? Do you know?

13 A. I don't know that's specified anywhere.

14 Q. Also looking at Figure 4 -- so you're saying that
15 Figure 4.2-5 in the application is not correct.

16 A. No, I'm not saying that. I'm saying that it just
17 represents a much more rough estimate of visibility based on
18 terrain only. It does not take into account current
19 vegetation.

20 Q. Why wasn't that done as part of the application?

21 A. I was not part of the project management or the
22 decision to produce this GIS map. That's a good question for
23 Chris.

24 Q. You had no role in coming up with this figure?

25 A. If you are referring to Figure 4.2-5 --

1 Q. Yes?

2 A. -- no, I was not. I did not create that figure.

3 Q. But you created a similar figure just adding in
4 vegetation.

5 A. Actually Chris did at my request to give us more
6 information about visibility.

7 Q. You don't recall any discussions when these
8 documents were being prepared about including vegetation in
9 the analysis?

10 A. No, not specifically.

11 Q. Okay.

12 MR. MOSS: Judge Wallis, in the interest of having
13 a clear record, I'm looking at Figure 4.2.5 in the
14 application, and it's probably my eyesight, but it appears
15 to me that the stretch we're talking about here which is
16 Mitchell Point which can be seen on the more blown up
17 version, it appears that to me that is in the one to five.
18 Maybe it's just my vision, but anyway I think we need to
19 have that clarified at some point in this whole process
20 because what I see is it's five gradations here: 1 to 5, 6
21 to 15, 16 to 25, 26 to 35, and greater than 35. If I look
22 at the colors, it looks to me like on the mountains to the
23 south of I-84 those are in light green color which is
24 greater than 35. As I move toward the river I see 1, 2, 3,
25 4.

1 THE WITNESS: Let me just clarify the process we
2 went through.

3 MR. MOSS: I'm not talking about the process you
4 went through. I'm talking about Figure 4.3.5 which you said
5 you didn't participate in. I want to be clear as to what
6 we're seeing in that figure because it appears to me that
7 the point that counsel is referring to there is shown on
8 this 4.2.5 consistent with what's shown on Exhibit 8.04r
9 which is one of the five turbines visible. I just want it
10 to be clear that at some point you've got to get together
11 and figure out what you need to do to make that clear. If
12 you refer to this in your brief, and I look at it and it
13 doesn't --

14 MR. KAHN: Well, I would note that this is
15 obviously not a precise document because of the scale, but
16 we will do our best to do that.

17 MR. MOSS: I think you need to have a clear record
18 on it.

19 MR. KAHN: Okay. Thank you.

20 A. I can clear that up if you would like to. I've had
21 very specific information in Mitchell Point.

22 BY MR. KAHN:

23 Q. Is that part of the application?

24 A. Not in there right now. I can tell you the process
25 that we went through and what exactly can be seen from

1 Mitchell Point, but a much more rigorous analysis that we
2 performed at Mitchell Point where we actually modeled that
3 location. In other words, the precursors to doing that
4 simulation to see how many visible impacts there would be
5 there, and we found there would be two to three turbines
6 visible from up on top of Mitchell Point where the current
7 viewpoint is. If you exit off of I-84 going east there's
8 only two to three turbines that would be visible from that
9 location so we did not do another simulation there with that
10 small number of turbine visibility at that location.

11 Q. The two to three that you just mentioned was
12 vegetation included or without?

13 A. With vegetation included.

14 Q. And more would be visible if vegetation was not
15 included?

16 A. Slightly more. Mostly blocked by the terrain and a
17 very small amount by the trees on top of the terrain.

18 Q. Are you familiar with the location of the Underwood
19 Bluffs as would be visible from Mitchell Point?

20 A. Approximately.

21 Q. If you're standing -- when I say Mitchell point,
22 I'm referring to you can turn off the highway and drive up a
23 bit, and there's --

24 A. As far as the viewpoint I've been there, yes.

25 Q. Would any of these turbines be visible above

1 Underwood Bluff from Mitchell Point?

2 A. Be visible from where?

3 Q. From Mitchell Point extending over the bluff as a
4 viewer is looking to the north?

5 A. I don't know that -- there's only two to three
6 visible from one patch as you're looking at the skyline from
7 Mitchell Point across the river. I don't know what the
8 relationship is to the Underwood Bluffs that you're referring
9 to without doing some further analysis and looking at the map
10 closely, but I can tell you what can be seen completely of
11 the site there is about two to three turbines.

12 Q. Could you look at Exhibit 8.19r, one of our
13 rebuttal exhibits. 8.19c, I'm sorry.

14 A. I don't know that I have that. Can somebody supply
15 it?

16 Q. I will hand it to you.

17 MR. McMAHAN: Again, can you tell us what the
18 document is by name.

19 MR. KAHN: It's a comment letter from Friends of
20 the Columbia River Highway to EFSEC and BPA in connection
21 with this project dated -- I don't see a date -- August of
22 2010 I believe.

23 MR. McMAHAN: So you're referring to something
24 that's in the SEPA record?

25 MR. KAHN: I'm referring to a letter from -- yes,

1 I imagine it would be in the SEPA record. Now it is going
2 to be here.

3 BY MR. KAHN:

4 Q. That is the document. Could you look at this first
5 picture that follows the last page of the text.

6 A. The first picture that follows the last page of --

7 Q. That one. The one in your hand.

8 A. Yes.

9 Q. Is that a viewpoint of Mitchell Point?

10 A. Yes.

11 Q. Is that the Underwood Bluffs in the foreground
12 across the river?

13 A. I'm not sure of the extent that -- if on that side
14 is considered an extension of the Underwood Bluffs, if you
15 look at that label on the map.

16 JUDGE WALLIS: For clarification that map bears
17 the designation view from Mitchell Point 2010; is that
18 correct?

19 MR. KAHN: Yes, that is exactly correct. Thank
20 you.

21 BY MR. KAHN:

22 Q. From that viewpoint, in that direction you don't
23 know whether you see turbines above the bluff in the
24 distance?

25 A. What I'm saying is I don't know where exactly the

1 bluff starts and ends. What I can tell you is looking
2 straight across what you're going to see right near the top
3 of that line up there in the saddle is two to three visible
4 turbines.

5 Q. It's your testimony then they would only be visible
6 in the saddle that's on the left-hand side, left center. Is
7 that what you're saying?

8 A. I would have to review our model to tell you for
9 sure, but what I can tell you for sure is what I'm saying is
10 I would have to review the model to tell you exactly the
11 location of where they're visible, which ones are visible,
12 but I can tell you right along that skyline up there would be
13 two to three partially visible turbines.

14 Q. I'd like to turn your attention back to Figure
15 4.2-5, and I'll take that exhibit.

16 MR. KAHN: Your Honor, I would move that whatever
17 exhibit this is, Exhibit 8.19c be admitted?

18 (Exhibit No. 8.19c offered into evidence.)

19 MR. McMAHAN: Your Honor, I would suggest that the
20 photo be admitted. That's what was used, not the whole
21 comment letter which is in the SEPA record.

22 MR. KAHN: The comment letter refers to the photo
23 and incorporates it. It's a whole document.

24 MR. McMAHAN: I still believe that the appropriate
25 use of the document was to the photo. That was all that was

1 used, and that's the only relevance here, and I would
2 appreciate that only be admitted here.

3 JUDGE WALLIS: Let's reserve ruling until we get
4 an opportunity to take a look at the entire document.

5 MR. KAHN: When you do so I ask you to pay
6 attention to the bottom of the first page where the
7 commenter points out that the Mitchell Point overlook is
8 even more visually sensitive than I-84, and it's a place
9 where people stop and get out of their cars to take photos.
10 It's a very important part of this comment letter.

11 MR. McMAHAN: Your Honor, I'm going to object to
12 that. You know, the author of this letter is not here. We
13 are not able to cross-examine the author of this letter. I
14 think it's quite inappropriate to have the entire letter put
15 in here when the real purpose was to have Mr. Watson comment
16 on the photo which he's done.

17 MR. KAHN: I have two responses to that, Your
18 Honor. Number one is Mr. McMahan's objection is essentially
19 hearsay. Under both the APA and the EFSEC rules hearsay is
20 admissible, number one. Number two, there were a number of
21 documents admitted as exhibits to witnesses of the Applicant
22 that are also not -- the authors of which are not available
23 for cross-examination so it goes both ways. You're going to
24 reserve ruling on that?

25 JUDGE WALLIS: Yes.

1 MR. KAHN: Will we get a ruling at some point?

2 JUDGE WALLIS: Yes.

3 BY MR. KAHN:

4 Q. Turning back to 4.2-5 could you identify the
5 approximate location of Viento State Park in relation to
6 something that's evidenced in this document?

7 A. Yes, Viewpoint 14.

8 Q. In your testimony -- actually is it fair to say
9 that much of the Historic Columbia River Highway between the
10 Viento State Park and Hood River are within the 6 to 15
11 visible turbine range?

12 A. No, it is not fair to say because there isn't any
13 what you call finished or accessible portions of the Historic
14 Columbia River Highway in that area in between Viento State
15 Park, and other than Mitchell Point and Ruthton Point where
16 there is no public access those are the only currently
17 publicly accessible areas that people visit other than I-84
18 along the Historic Columbia River Highway.

19 MR. McMAHAN: Counsel, would you like me to put
20 that map up on the power point?

21 MR. KAHN: I don't think it's necessary.

22 BY MR. KAHN:

23 Q. If you look at I-84 between what you identified as
24 Mitchell Point and Hood River isn't a large chunk of that in
25 the color that correlates in at least 6 to 15 turbines in

1 visible range?

2 MR. McMAHAN: Which map are you referring to now?

3 MR. KAHN: Figure 4.2-5.

4 A. Between Viento Park and Hood River?

5 BY MR. KAHN:

6 Q. Between Mitchell Point and Hood River.

7 A. Between Mitchell Point and Hood River.

8 Q. Isn't there a good chunk of that in the color that
9 indicates 6 to 15 visible turbines?

10 A. Yes, but that doesn't take into account local
11 masking from vegetation next to the highway as well as
12 specific terrain that is like big banks, and next to the
13 freeway which block the terrain is a much more accurate
14 representation of the visibility of turbines on that stretch
15 in this figure 8.05r which shows the actual visibility from
16 the freeway to the site based on the current masking
17 structures, terrain, and vegetation.

18 Q. So we have in the application Figure 4.2-5 which
19 you just said is not very accurate.

20 A. No, it is accurate for terrain only.

21 Q. You just said that there's no actual existing part,
22 if I heard you correctly, of the Historic Columbia River
23 Highway between Mitchell Point and Hood River. Is that what
24 I heard you say?

25 A. I did not say there is no part. I said publicly

1 accessible places. I've been out there up and down that
2 stretch on numerous occasions, and Mitchell Point is really
3 the only frequented park of the Historic Columbia River
4 Highway in that stretch.

5 Q. So there is an accessible park at the Columbia
6 River Highway at Mitchell point. Correct?

7 A. If you can call it that. It's a parking lot with
8 an interpretive sign.

9 MR. McMAHAN: Counsel, again, if you could refer
10 to the map that's specific to your question.

11 MR. KAHN: He's answered my question.

12 BY MR. KAHN:

13 Q. You don't have any of the rebuttal exhibits that we
14 submitted yesterday, is that correct, in front of you?

15 A. Only the visual issue one.

16 Q. Then I'm going to have to give you another one.

17 MR. McMAHAN: Which one are you going after so we
18 can find it?

19 MR. KAHN: 8.17.

20 MR. McMAHAN: Name of the document?

21 MR. KAHN: 8.17 is entitled HCRH segments is the
22 cover page. 8.18 is a tribal map. It's called the Columbia
23 River Highway Connection Project.

24 JUDGE WALLIS: Let's be off the record for some
25 discussion here.

1 (Discussion off the record.)

2 A. Which one am I searching for?

3 BY MR. KAHN:

4 Q. Right now. Let's talk about 8.17 which is entitled
5 the first page is HCRH segments.

6 A. Okay.

7 Q. Have you ever seen Exhibit 8.17 before?

8 A. Yes, I reviewed it yesterday. I've also seen it on
9 line before.

10 Q. What is it?

11 A. It's Historic Columbia River highway segments.
12 It's pictures and description of existing conditions as well
13 as the vision for what they want to accomplish for each of
14 these segments in the future.

15 Q. Do you know when this was prepared?

16 A. No, I don't.

17 Q. Or who prepared it?

18 A. No, I don't.

19 Q. Does it indicate that the plan in the future is to
20 reconnect a number of the segments of the Historic Columbia
21 River Highway?

22 A. That is a definite desire. There's not specific
23 funding yet.

24 Q. Exhibit 8.18 which is the Historic Columbia River
25 Highway Reconnection Projects.

1 A. Yes.

2 Q. Do you have that?

3 A. Yes, I've got it.

4 Q. Have you had an opportunity to review that?

5 A. Yes, briefly.

6 Q. What is that document?

7 A. It's showing again segments of the Historic
8 Columbia River Highway that they are planning or wanting to
9 restore and/or improve.

10 Q. Do you know when that document was prepared?

11 A. I don't. October 18, 2010.

12 Q. So fairly recently. Actually if you look at the
13 first page doesn't it say March 2009?

14 A. March 2009, yes.

15 Q. This is a government document that proposed
16 reconnecting the segments of the HCRH; is that correct?

17 A. Yes, that's what it appears to be.

18 Q. Were you aware of that when you did your modeling
19 and selected viewpoints from which to do the simulations?

20 A. I did research on line to see what was valuable. I
21 knew that there were desires and plans to do a lot of this
22 work, but we only selected sites and locations that are
23 currently in the views and not based on a wish list, whether
24 it be a government wish list or a private wish list.

25 Q. You call this a wish list. Those are your words?

1 A. Yes.

2 Q. Are you familiar with the provision of the Columbia
3 River Gorge National Scenic Area in which Congress has
4 directed the State of Oregon to reconnect these segments of
5 the highway?

6 A. Yes, I've heard of that.

7 Q. So there's a legislative mandate to connect the
8 segments and yet you refer to that as a wish list?

9 A. Well, it's subject to funds as what I saw on the
10 Friends of the Historic Columbia River Highway website a
11 couple months ago, at least a couple months ago they said
12 subject to funds being acquired. For example, for the
13 section from Mitchell Point to Hood River the tunnels is 12
14 million dollars which might take a while for them to get to
15 in this current fiscal situation.

16 Q. Are you aware that there have been other sections
17 of the highway that have been restored because of this
18 language in the National Scenic Area?

19 A. Yes.

20 Q. Yet there was no consideration given to modeling to
21 have the simulations from the views of the highway given a
22 statutory mandate to reconnect?

23 A. There was some consideration given because
24 basically there was a section down there that are merely
25 overgrown trees and forest with very few exceptions, and so

1 they do not give locations to see a substantial amount of the
2 project site. And what is visible in this section between
3 Mitchell Point and Hood River is very, very limited. As we
4 determined when we did specific analysis from both Mitchell
5 Point and from Ruthton Park right next to where it's termed
6 Mitchell Point -- or excuse me, Ruthton Point which is not
7 currently publicly accessible.

8 Q. If I just heard you correctly, you said that one of
9 the considerations of why you didn't model was because the
10 vegetation made it difficult to see what would be visible.
11 Is that more or less what you just said?

12 A. That's correct.

13 Q. But doesn't Exhibit 4.2-5 ignore vegetation to
14 determine what area is visible?

15 A. 4.2-5 is a look and analysis based on terrain.

16 MR. McMAHAN: Your Honor, I think that's been
17 asked and answered a number of times about 4.2-5.

18 MR. KAHN: Not that question.

19 BY MR. KAHN:

20 Q. So are you saying that it was not possible to do a
21 visual simulation because the vegetation, the overgrowth that
22 you mentioned that was on that section of the HCRH?

23 A. That's correct. Because the way the visual
24 simulations are created is you take a picture of the site of
25 the location from the viewpoint that you want to simulate and

1 then you model it, and then you go through all those steps
2 that I have indicated in my previous testimony. And so if
3 you're taking a picture of the site of a bunch of trees it's
4 kind of counterproductive.

5 Q. With the computer technology and methodology that's
6 available now are you saying that there couldn't have been a
7 model made of a visual simulation from a particular point on
8 there that relied on elevations and topography only and not
9 account for vegetation?

10 A. No, you can do these things, but it would not be
11 all that useful because we've also done the analysis to see
12 what both the vegetation on the far side of the river at
13 Mitchell Point, for example, which is completely bare. We're
14 talking about no vegetation in the foreground. That is where
15 the camera is located, and you're looking across the river.
16 The only thing taken into account there in that analysis is
17 the terrain and the vegetation on the far side of the river
18 on those ridges which is irrelevant to as you stated a
19 viewpoint in the trees along the Old Historic Columbia River
20 Highway.

21 JUDGE WALLIS: Let's be off the record for a
22 minute.

23 (Discussion off the record.)

24 JUDGE WALLIS: Let's be back on the record,
25 please.

1 BY MR. KAHN:

2 Q. Could you look at Exhibit 8.20 which is the Oregon
3 State Parks document.

4 A. I don't see a label on it.

5 Q. The first page talks about the excerpted list and
6 descriptions for Oregon State Parks facilities.

7 MR. BAKER: It's at the bottom of the stack.

8 MR. KAHN: It's the bottom of the stack?

9 A. Bottom of the stack. Descriptions of Oregon State
10 Park facilities 8.20. I've got it right in here.

11 BY MR. KAHN:

12 Q. Have you seen this document before?

13 A. I think I might have reviewed it late last night
14 since I just got it yesterday. I'm not really familiar with
15 it.

16 Q. Okay. Based on your brief review is it a
17 description -- does it indicate that the Mitchell Point
18 overlook is a trailhead for access for these three state
19 parks?

20 A. I'd have to read through this to -- I would have to
21 read through to answer that question.

22 Q. Were you aware that the State of Oregon promotes
23 these parks for their access to the Oregon Trail and Historic
24 Columbia River Highway?

25 A. I'm not familiar with those details, no.

1 Q. Are you familiar with the fact that the State of
2 Oregon promotes these park facilities for hiking,
3 backpacking, and extension views of the mountains?

4 A. I'm aware of the general promotion of those parks,
5 yes.

6 Q. At page 21 of your testimony.

7 A. The initial testimony or the rebuttal?

8 Q. I'm sorry, rebuttal. On page 21 of line 5 through
9 the end of page 22, line 5 through 15, you respond to
10 Mr. Apostol's contention that some of the simulations depict
11 the project with a cloudy background, then with a blue sky
12 background. You also provide at Exhibit 8.10r which is your
13 rebuttal testimony which is a simulation with white clouds
14 what appears to be photo shopped out and replaced with blue
15 skies.

16 A. Digitally removed.

17 Q. So it's the same picture; it's just photo shopped
18 in layman's terms.

19 A. Yeah.

20 Q. You then go into an extensive response regarding
21 how lighting and contrast vary depending on the time of day,
22 and that in your opinion the turbines in 8.10r are no more
23 contrasting with the blue background than with a white
24 background. Is that a fair summary?

25 A. 8.10r is I-84 westbound. That's correct for that

1 one.

2 Q. So your contention is that there is no more
3 contrast with a blue background than with a white background?

4 A. That's why we provided the comparison so you can
5 see the clouds digitally removed. The exact same matching of
6 the sky gradient was put in behind them, and you could
7 compare for yourself whether or not you think there is more
8 contrast with one or the other. In this case, and it is very
9 common for the horizon to look very gray and very faded out
10 because of haze and atmospheric conditions, and so in this
11 case the gray I think it at least has as much contrast
12 against the bright white clouds as it does against the
13 horizon in the sky.

14 Q. You've indicated earlier the contrast is partially
15 dependent on where the sun is?

16 A. That's correct because what we discussed earlier
17 about shadow and how that impacts the apparent colors of the
18 object and its background.

19 Q. What time of day did you take the photos that are
20 shown on this exhibit?

21 A. 11, View 11?

22 Q. Yes, or any of the ones. Let's just take Viewpoint
23 11.

24 A. Viewpoint 11 was sometime in the late afternoon. I
25 don't have the specific number ahead of me. Oh, it's in

1 here. Viewpoint 11 was about 5:52 p.m.

2 Q. Where was that in relation to the photographer?

3 A. It was in the west.

4 Q. Would that increase or decrease the contrast?

5 A. Increase or decrease the contrast with the --

6 Q. From the visibility, the contrast of the turbines
7 against the background sky?

8 A. It depends on the color of the sky gradient. In
9 this case I think that the gray which comes from the
10 shadowing, the self-shadowing of the turbines because the sun
11 is behind them. And this is just a common sense way you can
12 look at the picture yourself and decide where you think the
13 contrast is. The point of this was that you cannot
14 generalize and say that the cloud behind the turbines will
15 always have a greater contrast. In many cases it will have
16 more contrast to have the clouds behind it as opposed to
17 having a cloudless sky behind it or cloudless horizon in the
18 sky.

19 JUDGE WALLIS: Counsel, when you're referring to
20 Viewpoint 11, can you give me an exhibit number on that?

21 MR. KAHN: It's in 8.10r the witness is testifying
22 about.

23 THE WITNESS: It's Viewpoint 11, Figure 4.2-14 in
24 the ASC.

25 BY MR. KAHN:

1 Q. How many visual simulations from viewpoints did you
2 do?

3 A. We did about -- well, we ended up with actually
4 only doing 22.

5 Q. Twenty-two that are displayed in the documents?

6 A. No, 22 complete. One of them intended to do was at
7 Pine Grove, but when we did the ground survey out there in
8 the Pine Grove area there was no places where you could
9 actually see the site because the orchards were in the way so
10 we ended up not doing a simulation.

11 Q. How many simulations are displayed in the
12 application?

13 A. I think 21 because we did not -- we also didn't
14 include another view at Mill A which is virtually identical
15 to the other Mill A's simulation. It was redundant.

16 Q. Approximately how much time on average does it take
17 to perform one of these simulations?

18 A. Well, if you include travel and photography and
19 then 3D modeling and photo compositing and then figure
20 creation, a day, maybe more. That is if you divide the
21 travel by all the photos instead of doing them all at once.

22 Q. I'd like to ask you some questions about Washington
23 State Route 14. You're familiar with that highway I assume?

24 A. Yes.

25 Q. That's the highway that parallels the river on the

1 Washington side?

2 A. Yes.

3 Q. Is it your understanding that's been designated as
4 the Washington State Scenic Highway?

5 A. I'm not really familiar with its designation, but I
6 did do an analysis along that about visibility.

7 Q. Do we have any photo simulations from any point on
8 State Route 14 that are in the application?

9 A. No, the only place where any visibility would be is
10 a small amount of visibility right in the middle of Bingen
11 which is in the exception area, the urban exception area.

12 Q. When you say urban exception area, I'm assuming
13 you're referring to the designation as an urban area in the
14 Columbia River Gorge Scenic Area Act?

15 A. Yes, from 1986.

16 Q. What's the connection? What's the relationship of
17 that to where you're doing visual simulations from?

18 A. Not necessarily any connection. It is just
19 additional information, but what we found that's the only
20 location where there's a few turbines visible right in the
21 dead center of town just like the ones we did in Hood River.

22 Q. Aren't there other visual simulations that are in
23 the application from within designated urban areas?

24 A. Yes, at Hood River.

25 Q. Does the application include any analysis at all of

1 impacts to the scenery from State Route 14?

2 A. Impact to scenery?

3 Q. Any scenic impacts along State Route 14 from the
4 turbines? Is there any analysis whatsoever as to how the
5 view would be affected?

6 A. No, there is no written analysis. I did not create
7 any visual simulations from SR-14 for the reasons that I
8 stated. It has very little visibility and only in one small
9 area in the middle of Bingen.

10 Q. Who was primarily responsible for finally
11 determining which viewpoint simulations should be made and
12 included in the application?

13 A. Well, it was a long process. Jason Spadaro had the
14 initial responsibility. He pointed us in the right
15 directions, and then we did our ground surveys to determine
16 where in each of the named key viewing areas it would be
17 valuable to do the simulations.

18 Q. Were there any user surveys performed prior to
19 selecting these viewpoints?

20 A. I was not involved in any user surveys.

21 Q. Do you know if any were done?

22 A. I do not know.

23 Q. Have you seen any results of that in any of the
24 documents that comprise the application?

25 A. I have not.

1 Q. Did you do any surveys of users of I-84 in
2 connection with this project?

3 A. I did not perform any surveys. I think you're
4 getting into Dautis' area.

5 Q. Okay. I just have two more questions, and you may
6 have the same response there. Were you involved at all in
7 the work performed for the potential but disbanded Middle
8 Mountain Wind Project?

9 A. I was.

10 Q. That's in Oregon. Correct?

11 A. Yes.

12 Q. Up Hood River Valley?

13 A. Yes.

14 Q. In connection with that did you perform any
15 surveys, any user surveys of I-84 for that project?

16 A. I know that there was a lot of community
17 involvement work by the county. This was sponsored by Hood
18 River County actually, and they were the ones that determined
19 what visual simulations, what viewpoint they wanted to
20 perform based on their studies and their interaction with the
21 community.

22 Q. So are you saying you did not do any user surveys?

23 A. I would not have performed any surveys for that
24 project.

25 MR. KAHN: Thank you. That's all I have.

1 JUDGE WALLIS: Very good. Would you like to
2 identify for us the documents based on this examination
3 proposed for admission?

4 MR. KAHN: Yes, 8.16 through 8.20.

5 (Exhibit Nos. 8.16c through 8.20c offered into
6 evidence.)

7 JUDGE WALLIS: Any objections?

8 MR. McMAHAN: No, Your Honor. They were in fact
9 were all a part of hearing examination.

10 JUDGE WALLIS: Very well. The documents are
11 received.

12 (Exhibit Nos. 8.16c through 8.20c admitted into
13 evidence.)

14 MR. KAHN: Okay. That's all I have.

15 JUDGE WALLIS: So let's take our noon break and
16 return at 1:30 p.m.

17 (Lunch recess from 12:00 p.m. to 1:30 p.m.)

18 JUDGE WALLIS: Let's be back on the record
19 following our noon recess.

20 Mr. McMahan, I did in rethinking the last few
21 moments of the morning session have a concern that you still
22 have an objection to a part of Exhibit 1.19 related to the
23 text related to a single photo. I wasn't sure whether you
24 were foregoing that objection or whether you wish to pursue
25 it.

1 MR. McMAHAN: I'm sorry. It's not 1.19. It is
2 8.19, right. No, my objection stood. I was stipulating to
3 the admissibility of the photo, but not the whole text.

4 JUDGE WALLIS: Very well.

5 MR. KAHN: I'll make the same comment I made
6 earlier, and that is it is hearsay and hearsay is
7 admissible. There are a number of hearsay documents that
8 were attached to various Applicant's witnesses that there's
9 been no objection to in the record so it should go both
10 ways.

11 JUDGE WALLIS: Hearsay is admissible in the APA if
12 it is considered to be reliable. What is your view of the
13 reliability of that particular document?

14 MR. KAHN: It was a comment letter by a government
15 sponsored agency about this project as part of the SEPA
16 process. In addition, given what you said earlier this
17 morning that one of the issues that EFSEC, that the Council
18 will decide the three issues, the landscape consistency, the
19 adjudication, and the SEPA process you indicated that all of
20 that would be fair game in part of your decision making.
21 That document is already in the SEPA record because it was
22 submitted as part of that process, and based on your earlier
23 statements we needed to resubmit those documents as part of
24 this adjudication which is what we've done. And we had
25 testimony about it. I think it's a very legitimate

1 document. It's no different than any of the other hearsay
2 documents that are in the record.

3 MR. McMAHAN: I would just respond that it is
4 admittedly in the SEPA record. That's an appropriate place
5 for it to be. The question is not even so much as to
6 credibility of the documents. The question was as to asking
7 Mr. Watson to opine about this view from Mitchell Point.
8 The questions were asked to that photo. Yes, the document
9 is in the record. That's clearly certain in the SEPA record
10 so it's part of the Council's consideration for these
11 proceedings. The question is about the photo.

12 MR. KAHN: And there have been a number of
13 documents in where's there a question or two about one
14 portion of them, and we haven't excised everything else.

15 JUDGE WALLIS: Yes, very well. The objection is
16 overruled and the document may be admitted.

17 I'm not sure that I agree entirely with counsel's
18 characterization of process, but it is not something that we
19 need to address right now. I think at the conclusion of
20 this hearing we can go into what will be determined in the
21 adjudication, what will be determined in SEPA, what will be
22 determined in the land use consistency process.

23 So with that, I believe everyone has had a chance
24 to cross-examine the witness, Mr. Watson, and let me ask if
25 there's any redirect.

1 MR. MARVIN: Excuse me. I would like to engage in
2 just a short cross-examination.

3 JUDGE WALLIS: I'm sorry. Go ahead, Mr. Marvin.

4 CROSS-EXAMINATION

5 BY MR. MARVIN:

6 Q. I just wanted some clarification, and I apologize
7 if this has already been covered in your written testimony.
8 But I want to look at Exhibit 8.08r. Those are the big
9 foldout copies of yours, and my understanding is that you
10 were here testifying with regard to the technical creation of
11 these computer generated images; is that correct?

12 A. That's correct.

13 Q. And so when we look at these documents in terms of
14 the text here what were you responsible for as opposed to
15 some other consultant?

16 A. I am only responsible for the portions just the
17 basic data, lists of data, the first three columns of the
18 viewpoint information, and then instructions on how to use
19 these simulations. I am not responsible for the visual
20 impact analysis tests. That would be Dautis Pearson.

21 MR. MARVIN: Okay. Thank you. That's all I have.

22 JUDGE WALLIS: Very well.

23 MR. McMAHAN: And I have no redirect.

24 JUDGE WALLIS: Very well. Is there anything
25 further for this witness?

1 Any Council questions?

2 Let the record show that will be no questions from
3 the Council Members so this witness is a excused.

4 Let's be off the record while the next witness
5 steps forward.

6 (Off the record.)

7 JUDGE WALLIS: Let's be back on the record,
8 please.

9 It's Mr. Pearson; is that correct?

10 THE WITNESS: Correct.

11 JUDGE WALLIS: Mr. Pearson, are you as comfortable
12 as a person can be in that particular chair?

13 THE WITNESS: Yes, I think this will work.

14 DAUTIS PEARSON,
15 having been first duly sworn on oath,
16 testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. McMAHAN:

20 Q. Good afternoon, Dautis, and I noted earlier you are
21 rather soft spoken so you're going to have to get yourself
22 close to that microphone I think.

23 A. I used to be a musician so I should know how to
24 work this thing.

25 Q. Mr. Pearson, please state your full name and your

1 address for the record.

2 A. My name is Dautis D. Pearson. I'm a 58670 Airport
3 Road in Vernonia, Oregon, and I work for URS Corporation on
4 111 Southwest Columbia in Portland.

5 Q. I believe you have in front of you what's marked as
6 Exhibit No. 9.00 with attachment 9.01; is that correct?

7 A. Yes.

8 Q. Sir, is that your written direct testimony in this
9 matter?

10 A. That's correct.

11 Q. Is there anything that you would change today about
12 that testimony?

13 A. No, it is good.

14 Q. Are you prepared to suffer the pains of
15 cross-examination for that testimony today?

16 A. Yes, I am.

17 MR. McMAHAN: All right. Move to admit, Your
18 Honor.

19 (Exhibit Nos. 9.00 and 9.01 offered into
20 evidence.)

21 MR. KAHN: No objection.

22 JUDGE WALLIS: Exhibits are received.

23 (Exhibit Nos. 9.00 and 9.01 admitted into
24 evidence.)

25 BY MR. McMAHAN:

1 Q. Similarly, Mr. Pearson, I think you have in front
2 of you Exhibit 9.02r; is that true?

3 A. Yes, it is.

4 Q. Is that your rebuttal testimony in this proceeding?

5 A. Yes, it is.

6 Q. And it has a number of documents attached to them
7 9.03r, 9.04r, 9.05r, and 9.06r. Is that in its entirety your
8 rebuttal testimony in this proceeding?

9 A. Yes, it is.

10 Q. And are you prepared to be cross-examined
11 concerning that testimony?

12 A. Yes, I am.

13 MR. McMAHAN: I move to admit, Your Honor.

14 (Exhibit Nos. 9.02r through 9.06r offered into
15 evidence.)

16 MR. KAHN: No objection.

17 JUDGE WALLIS: Received.

18 (Exhibit Nos. 9.02r through 9.06r admitted into
19 evidence.)

20 MR. KAHN: Are we ready?

21 CROSS-EXAMINATION

22 BY MR. KAHN:

23 Q. Before we start, Mr. Pearson, do you have our
24 rebuttal exhibits in front of you from yesterday?

25 MR. BAKER: I am doing them.

1 MR. KAHN: If we can wait a moment then we can
2 hand him a packet so we don't have to do it one by one.

3 JUDGE WALLIS: Yes.

4 BY MR. KAHN:

5 Q. Mr. Pearce, I'll be asking you a number of
6 questions on those. You sponsored the scenic resource
7 assessment section of the application; is that correct?

8 A. That's correct.

9 Q. Would you agree that the scenic resource assessment
10 is generally an area of expertise for landscape architects?

11 A. The Forest Service tends to advocate that a
12 landscape architect is instrumental in inventories and
13 assessments. It is not necessarily. BLM doesn't advocate
14 that and BLM tends to work mainly with land use planners or
15 even NEPA coordinators. And throughout the profession I've
16 noticed that the Forest Service is the one who generally
17 looks at the landscape architect as a person who should be
18 evaluating visuals, but also the Forest Service also has that
19 they like to design Kiosk and recreation areas so the
20 architectural portion of that is instrumental in there. It
21 has been my practice over the years that it is not a
22 necessity for visual assessments or aesthetic.

23 Q. You mentioned the Forest Service and BLM so I
24 believe you're familiar with their methodologies for
25 assessing scenic issues?

1 A. I worked for the Forest Service for 12 years in
2 Region 4 as a land use planner and also as a NEPA
3 coordinator. During that period of time I worked on a
4 project called the Deadwood Landscape Ecosystem Process which
5 Jack Ward Thomas, the Chief of Forest Service at that time,
6 went back to Washington, D.C., to present that and worked
7 across the board working with large scale assessments and
8 also how do we reintroduce fire in the NEPA system and at the
9 same time retain those visual attributes that we are working
10 with. So I was a big part of that whole process.

11 I have since that time worked with the Forest
12 Service on several different projects related to aesthetics.
13 Mostly for projects that have embedded in them the policy of
14 aesthetics and recreation. And I'm currently working with
15 BLM on a couple different things. One is the Deschutes
16 River we just reclassified or did interim classifications of
17 the wild and scenic on the Deschutes River for a project, a
18 pipeline project, and then most recently we're working a 7
19 million acre visual resource inventory in Nevada with
20 multiple BLM analyses. So we were at a group in National
21 Park Service and NEPA also where they look at visual
22 resource inventory based on the Director's Order 110. So I
23 have that.

24 Plus I've worked extensively for FHWA (Federal
25 Highway Administration) doing visual assessments for transit

1 projects and Metro Portland and roadway projects throughout
2 the state of Oregon, Idaho, Washington, and portions of
3 California.

4 Q. You're not a landscape architect through?

5 A. I'm not a certified landscape architect.

6 Q. Over time the Forest Service has created two
7 manuals to address these issues. The first one was the Big I
8 Book. Are you familiar with that?

9 A. Yes, I am.

10 Q. And then they subsequently created the Scenery
11 Management System; is that correct?

12 A. That's correct.

13 Q. That superseded the Big I Book?

14 A. They still use the Big I Book in conjunction with
15 the scenery management system.

16 Q. If you could turn to Exhibit 8.14c.

17 A. I assume that's in the packet you gave me.

18 Q. Yes.

19 A. Okay. I have it.

20 Q. Is that the Forest Service SMS?

21 A. It looks like it's portions of that.

22 Q. An excerpt of it? If I can have you turn to the
23 very last page of that exhibit.

24 A. Page 34?

25 Q. Yes. Under No. 18 what is the point of their

1 Bullet Point No. 18 there? What does it say?

2 A. Special places are important.

3 Q. And the third bullet point under that is the
4 Columbia River Gorge listed as one of the large special
5 places of scenic value.

6 A. Yes, it is.

7 Q. And there's only a small number of places that are
8 highlighted in that whole page; is that correct?

9 A. That is correct.

10 Q. And the Gorge is one of them.

11 A. That's correct.

12 Q. The BLM has its own system called the Visual
13 Resource Management System or VRM; is that correct?

14 A. That's correct.

15 Q. If I could have you turn to Exhibit 8.11c.

16 A. Yes, I have it.

17 Q. Is that the BLM Visual Resource Management System,
18 that's where it's from?

19 A. Yes, that page is from there.

20 Q. If you could turn to page 3, Item No. 5. Does that
21 identify special areas that should be considered when doing
22 visual resource assessments?

23 A. It identifies special areas for management, yes.

24 Q. Among the definition of special areas is "scenic
25 area"; is that correct?

1 A. Yes.

2 Q. If I could have you turn to the next Exhibit 8.12c.
3 Are you familiar with that document?

4 A. This is the manual direction from BLM for Visual
5 Resource Contrast Rating.

6 Q. So you are familiar with it?

7 A. Yes.

8 Q. Have you utilized this in your work?

9 A. Yes.

10 Q. Finally the Federal Highway Administration has its
11 own methodology; is that correct?

12 A. That's correct.

13 Q. And that is at Exhibit 8.13c; is that correct?

14 A. Portions of the document are here, yes.

15 Q. You're familiar with that manual as well based on
16 what you said earlier; is that correct?

17 A. Yes, that's correct.

18 Q. The application states that you relied primarily on
19 the Federal Highway Administration Manual along with elements
20 from the Forest Service SMS in evaluating the impacts of
21 this; is that correct?

22 A. That is correct.

23 Q. Are you familiar with viewer preference studies
24 that were used as the basis for the Forest Service's SMS?

25 A. I am familiar with them in the context of the

1 document itself and how they perform those viewer
2 preferences.

3 Q. Does the SMS say that the research shows there's a
4 high degree of public agreement regarding scenic preferences?
5 Are you aware of that?

6 MR. McMAHAN: Could you point him to the page and
7 document.

8 MR. KAHN: Page 30.

9 MR. McMAHAN: Page 30 of?

10 MR. KAHN: Of Exhibit 8.14.

11 MR. McMAHAN: Could you point him to the page?

12 BY MR. KAHN:

13 Q. The very top of the page. Is that in the SMS?

14 A. Again, the statements you were requesting?

15 Q. That research shows there's a high degree of public
16 agreement regarding scenic preferences.

17 A. That's what's stated, yes.

18 Q. That's the first bullet point under basic premises.
19 Correct?

20 A. It's below the first bullet point.

21 Q. That first point is people value highly scenic
22 landscapes.

23 A. That's correct.

24 Q. At page 19 of your rebuttal testimony you challenge
25 Mr. Apostol's statement that research and practice have shown

1 that people within our cultural context prefer natural
2 landscapes that exhibit complexity and diversity at large
3 scales. Is that correct you challenge that statement?

4 A. Which statement is that? I'm sorry.

5 Q. Research and practice have shown that people within
6 our cultural context prefer natural landscapes that exhibit
7 complexity and diversity at large scale.

8 A. Would you give me that page.

9 Q. It is page 19 of your rebuttal testimony.

10 A. Page 19?

11 Q. Yes, I'm sorry. I misled you. The quote I just
12 gave is Mr. Apostol's statement. At page 19 do you challenge
13 that statement?

14 MR. McMAHAN: Page 19 has a block quote which
15 hasn't entirely been read to you, but it's on page 19.

16 A. I think my rebuttal speaks to that question.

17 BY MR. KAHN:

18 Q. And what did you say?

19 A. Is it necessary to read this or?

20 Q. Well, I'd like to know why you disagree with that
21 statement.

22 A. It is specific to wind energy. I think we have to
23 talk -- when we look at the SMS and the information that
24 they're trying to provide here in terms of public input is
25 key. We also have to take a look at the different types of

1 project-related practices that we would be doing. This is
2 specific to wind. That's why in my opinion this statement
3 was subjective.

4 We also have to look at perception. Public input
5 is important, but what we have to -- we can't assume that
6 input and that perception is the same as ours, and that's in
7 reading what Mr. Apostol had written here that's what I was
8 getting from him is that he had taken into consideration
9 those attributes of perception that people have. Everyone
10 in this room has a different perception about what we see.

11 So my disagreement in that is that is kind of a
12 subjective call in saying wind energy that people would
13 object to that, run to that.

14 Q. Again, on page 19 beginning on line 13 1/2 your
15 second sentence is "what people want, see, or believe is
16 diverse as the landscapes themselves." Are you trying to say
17 that there is no general consensus among people as to what
18 they want to see with respect to scenic resources that is
19 more subjective than objective?

20 A. I think that we tend to in these types of analyses
21 categorize people to some degree in differing types of
22 classification in order to be able to look at viewer
23 sensitivity and how people relate to these differing things.
24 I don't think there is a -- I don't think that we could
25 narrow it down in over the general -- yes, we make

1 generalizations sometimes. We put into view groups that we
2 use to analyze the sensitivity of differing types of users or
3 viewers, but at the same time what we have to understand is
4 that those perceptions, especially in the world that's
5 changing right now, are as diverse as the perceptions in this
6 room are. So understanding that we have to make sure that we
7 don't get too focused in on how a sensitivity relates across
8 the board because we all have to look at this from a
9 perception angle. So I agree that we will attempt to do that
10 from an analysis standpoint. We will categorize people. We
11 will put people together, but I also at the same time we have
12 to make sure that we look at diversity outside and not
13 everyone thinks and feels the same way that some of the
14 scenery sensitive groups might categorize them.

15 Q. So are you saying then that you disagree with the
16 statement on page 30 of Exhibit 8.14c which is the Forest
17 Service Scenery Management System which says that research
18 shows that there is a high degree of public agreement
19 regarding scenic preferences? Do you disagree with that
20 statement?

21 A. No, I don't disagree with that statement, but I do
22 want the caveat to say that the SMS also says the scenic
23 management goals must consider other national forest resource
24 management activities. That also says that what we need to
25 do is pull that into our analysis and use that, but it's --

1 I'm not saying that I disagree with them. I'm saying there's
2 a way we put that into our analysis is the important part.

3 Q. Again on page 19 in the question that starts at
4 line 5 there is a block quote of Mr. Apostol's testimony.
5 Part of that says that "research and practice have shown that
6 people within our cultural context prefer natural landscapes
7 that exhibit complexity and diversity in large scales." That
8 was what Mr. Apostol said.

9 MR. McMAHAN: That was part of what Mr. Apostol
10 said, if I could interrupt here.

11 MR. KAHN: Yes, it was part of. He said lots of
12 things.

13 BY MR. KAHN:

14 Q. You responded in your rebuttal testimony that
15 Mr. Apostol was merely expressing his own opinion on that; is
16 that correct?

17 A. That's correct.

18 Q. Is Mr. Apostol really saying anything different
19 than the quote I read from the Forest Service SMS System?

20 A. If you read that statement just as you read it,
21 then it fits perfectly with that. But also if you move onto
22 the next statement about the simple flat landscapes are less
23 value for scenery, I think you have to take a look at that
24 again going back to perception and public input on these type
25 of things. We can't narrow them down to say everyone prefers

1 specific types of landscapes. I know people down there who
2 would much prefer a desert landscape beyond a forested
3 landscape. So what I was disagreeing with is not SMS but
4 actually what Mr. Apostol had stated here.

5 He goes on here to talk about the Columbia Gorge
6 and Oregon Coast and places of Central Nebraska. I'm sure
7 if he talked to people Nebraska they would advocate that
8 Central Nebraska is a beautiful place to live. So I'm
9 merely disagreeing with his invitation to be very subjective
10 and say that if it's not in the Gorge then it is not
11 beautiful.

12 Q. Okay. The various scenic resource management
13 systems are roughly based on the same basic principles; is
14 that correct?

15 A. I'm sorry. Would you repeat that.

16 Q. The different scenic resource management systems
17 are they roughly based on the same basic principles?

18 A. They are based on the same basic principles: form,
19 line, color, or texture.

20 Q. Do they generally seek to employ objective methods
21 to evaluate scenic impacts?

22 A. When you say objective in terms of what?

23 Q. As opposed to subjective, something that's used
24 throughout the field.

25 A. These processes tend to be subjective, so, yeah,

1 there is a little objectivity to it, but what we try to do is
2 set these things up in an interdisciplinary fashion so it's
3 not just me making those decisions. It's several people
4 making those decisions, and we concur with each other and we
5 talk to each other about those. So because there's such a
6 subjective process, and all of them are that way we have to
7 make sure that what we do is we look at keeping our biases
8 and our perceptions out of the process as much as possible,
9 although those things added into the process actually added
10 to it add to it also significantly.

11 Q. Are you through?

12 A. Yes.

13 Q. Would you agree that a properly implemented scenic
14 impact analysis should be objective?

15 A. It should. You should take out of objectivity as
16 much as possible. What you want to do is at least have some
17 sort of criteria based analysis platform to weigh your
18 objective, the objectivity of the analysis against so that
19 you can sort that out. There is a certain amount of
20 objectivity to it, yes.

21 Q. Your preferred methodology is the Highway
22 methodology; is that correct?

23 A. I don't have a preferred methodology. I think what
24 we have to do as practitioners here, and again like I said
25 over the last two to three years I've probably done 10 to 15

1 of these type of analyses stemming from the Alaska to
2 Southern California, and I've used a different process in
3 every one of them. If it's for BLMs, you use BLM processes.
4 It's mandatory. They require a BLM process. If we're on
5 Forest Service we'll use a combination of a couple different
6 things depending on whether or not the BLM Forest Service
7 whichever the people we are working with has already
8 identified their management direction for those particular
9 ones, the VQOs or VRMs. So I don't have a preferred one. I
10 think it really looks -- what you have to do is look at the
11 project, the complexity of the landscape, the constituency
12 that you're working with and also what background information
13 is already there. Is there a management plan that might be
14 in place and also if the land has previously been subjected
15 to a planning level visual assessment.

16 Q. Let's talk about this project. I think you already
17 testified that you use the Highway methodology and the Forest
18 Service methodology. Correct?

19 A. That's correct.

20 Q. Was one used more than the other or more emphasis
21 on one?

22 A. I don't think there is an emphasis on one or the
23 other in any greater detail. What we tried to do is look at
24 the linear aspects of this type of project because it is
25 linear, and it does move out into differing landscapes. It

1 tends to move from ridge tops and lower areas and then back
2 up, and again then you have differing aspects that the
3 project sits on. So what we want to do is capture that
4 linear of it; that movement from one landscape to the next.
5 And then also what we want to do is to be sensitive to the
6 SMS because we are in a forested environment and we also are
7 close to national forest areas. So we borrow components that
8 establish some criteria and we could weigh or we could
9 establish our baseline conditions for the area for the
10 project area itself, and, two, we could actually demonstrate
11 that contrast between pre-project and post project.

12 Q. Is the Highway methodology intended to be
13 objective?

14 A. Yes.

15 Q. So you agree that it's intended to be objective?

16 A. To some degree. Like I said before, there is
17 subjectivity in all of these processes.

18 Q. If you could turn to Exhibit 8.13c, page 82.
19 That's the Highway methodology.

20 A. Okay.

21 Q. Does that come right out and say under the Highway
22 methodology that the actual or potential compatibility of the
23 project with this landscape setting can be objectively
24 evaluated?

25 A. Yes.

1 Q. At page 4.2-65 of the application, I will let you
2 get caught up. Do you have the application in front of you?

3 A. No, I don't. Could you repeat that?

4 Q. 4.2-65?

5 A. 4.2-65.

6 Q. Were you involved in writing this portion of the
7 application?

8 A. Yes, I was.

9 Q. In the bottom paragraph about two-thirds of the way
10 down it starts off, and I'm going to read and unfortunately
11 it's a lengthy quote, "for purposes of this analysis the term
12 significant may be defined as levels of visual impact that
13 are rated moderately high to high from any given viewpoint.
14 This does not mean that a particular location for the project
15 as a whole poses a significant impact for the purpose of the
16 SEPA review. Moreover while a particular viewpoint may be
17 characterized as having a high impact, that impact may be
18 experienced by a relatively small number of individuals or
19 relate to a small portion of the project, and it does not
20 account for the overall benefits of the project. Definition
21 of the term significant in this context, however, is
22 subjective and depends on many factors."

23 There's also a footnote to this passage that says
24 at the bottom of the next page, "Additionally for reasons
25 related to commercial viability and engineering feasibility

1 the project is proposed as an integrated whole, not a series
2 of separate components where parts of the whole may be
3 removed due to subjective perceived visual effects." Did
4 you write that language?

5 A. Yes, I did.

6 Q. How after an objective analysis as the Highway
7 Manual provides and you stated it did, how after that
8 analysis was completed can the term significant be subjective
9 and dependent on many factors after the analysis has been
10 done?

11 A. Well, I think what I stated here is that the term
12 significant is defined by the levels of visual impact and the
13 ratings of visual impacts. I am not sure what you're asking
14 here, but I think what it says here is exactly what I meant.
15 If you get into a moderately eye to eye that that could be,
16 that's an indication of significance.

17 On page 4.2-66 of the footnote this is related to
18 something that you had discussed earlier about the context
19 of the corridor stuff; that these are corridor type projects
20 and linear type projects, and we are not trying to assess
21 each turbine individually but the string of turbines in that
22 linear portion. So we're seeing this as an integrated whole
23 not as individual components.

24 Q. I guess my question here is that you acknowledge
25 that the Highway Administration Manual is intended to be

1 objective as it says. You've gone through an analysis
2 following the objective method, and then your conclusion is
3 that the term significant is subjective. How after you've
4 gone through the entire analysis, if it's been done right,
5 can it result in subjective if you've applied an objective
6 process?

7 A. I'm not sure I'm following your rationale.

8 Q. Let me try it again. The Highway Manual is
9 intended to set forth an objective methodology to determine
10 scenic resource impacts. Fair?

11 A. Yes.

12 Q. If you go through that process, you follow the
13 Highway Manual, you're going to end up with an objective
14 result if it's an objective process. Is that fair?

15 A. Again, what I said before was that there is some
16 objectivity to this, but it's not an objective process. The
17 process has some subjectivity or objectivity, but I wouldn't
18 say that the process is objective.

19 Q. So after you run through this entire objective
20 process factoring in the users, the site, the distance,
21 everything, you still come up with a subjective result. Is
22 that what you're saying? Is that what the application says?

23 A. The application says that -- well, I don't know.
24 The application says a whole bunch of things, but this
25 particular paragraph that you're talking about, I'm not sure

1 how I'm -- I'm not following how your rationale is looking at
2 objectivity and subjectivity based on this paragraph. I am
3 just not following you.

4 Q. Okay. In the paragraph on the bottom of 4.2-65
5 that I quote, the one that begins for purposes of this
6 analysis, you say that while a particular viewpoint may be
7 characterized as having a high impact, that impact may be
8 experienced by a relatively small number of individuals.
9 Then you go on to conclude that the definition of the term
10 significant is subjective. My question is as part of the
11 methodology, the process you go through, wouldn't the number
12 of viewers already have been factored in?

13 A. I don't see where I say that the term of
14 significance is subjective in this paragraph.

15 Q. It's at the very top of page 4.2-66, first full
16 sentence, "definition of term 'significant' in this context,
17 however, is subjective and depends on many factors."

18 A. The subjectivity on this is related to the
19 significance issue. It's not related to the process itself.
20 We are talking about the relative thresholds for significance
21 here, not about whether or not the process is subjective or
22 objective. This is about significance itself, and the
23 context of threshold which is subjective because it's
24 different for any resource, and it also has a different
25 threshold meaning to differing people. And, yes, you're

1 right. That would have been taken into the viewer
2 sensitivity levels to some degree with the understanding that
3 thresholds of significance may be different across the board.

4 Q. Let's change subjects. If you could turn to page
5 4.2-29 of the application. You've got that?

6 A. Yes.

7 Q. That provides the phrase that is used in the
8 application to assign landscape, scenic quality to view sheds
9 that would be affected by the project; is that correct?

10 A. This is one of the tools that we used to clarify --
11 not to clarify, used actually to help establish our baseline
12 conditions for the scenic area.

13 Q. The application states that the table includes
14 elements from both the Forest Service Manual and Federal
15 Highway Manual. Correct?

16 A. That's correct.

17 Q. Does it indicate what or what was pulled from each
18 one?

19 A. What we're looking at here in terms of -- no, it
20 doesn't indicate that directly.

21 Q. Does it indicate whether there were relevant
22 elements from either of those two manuals that were not
23 included in the table?

24 A. It does not do that here.

25 Q. So based solely on the contents of the application

1 we have no way of knowing if this table on 4.2-29 covers the
2 full scope of considerations required by either the Highway
3 Manual or Forest Service Manual; is that correct?

4 A. That's not correct. When we pulled this thing we
5 basically as I said, we stated before that we took a look at
6 the relevant analysis process for the Federal Highway which
7 has those linear features. It has the corridor capability to
8 look at things on the changing landscapes, and then we looked
9 at the scenery management system of this and pulled that into
10 it. There are words in here that are specific to the FHW
11 (Federal Highway Administration). The vividness and
12 intactness and unity are common words that are used in the
13 FHWA process, and when it says sensitivity issues and visual
14 compositions and those kind of things and human alterations
15 in the built environment, those are traded back and forth
16 between the Forest Service and the FHWA process.

17 Again what I remember about all of these analysis
18 processes is they're all based on the same thing. They're
19 all based on the same thing. They're based on land forms,
20 vegetation, water, color, adjacent scenery, scarcity, and
21 cultural modification. What the Federal Highway does is
22 takes that and distills that down into a vividness and
23 intactness and unity discussion to look at all of those
24 attributes. So we do not leave them out or pull them in.
25 We looked at the visual assessment in a way that we could

1 combine these two together and come up with a table that
2 gives us a relatively good way of assessing the landscape
3 scale or the area scale on a baseline condition.

4 I think this isn't about what's the good or bad
5 process. This is about the following process and knowing
6 how that process moves it through. So I think the idea is
7 that visual assessments all follow the same type of rigid
8 process, and it is not uncommon to mix and match these in
9 ways that best facilitate what we're after, disclosure, what
10 are the impacts, and that's what we're doing here. It is a
11 combination of both. It doesn't specifically say that this
12 word is from the FHWA process and that word is from the SMS
13 process, but it does state that it is a mixture of that for
14 those reasons that I have just stated.

15 Q. This process that came up with this mixture that
16 was an in-house process by you and your colleagues at URS; is
17 that correct?

18 A. No, actually this has been used by some of my other
19 peers in other types of analyses. I think actually Wild
20 Horse used this very similar process and also a couple of the
21 other ones that have been reviewed by this panel that I
22 believe used a very similar process too.

23 Q. Are you aware that the Forest Service SMS which is
24 Exhibit 8.14c includes a chapter on assessing the scenic
25 impacts from roads in linear projects?

1 A. Yes, I'm aware of that.

2 Q. If you had that why did you need to use the Highway
3 Manual if the Forest Service Manual already has a section on
4 roads for linear projects?

5 A. Well, I think what we have to do is go back again
6 and look at what we were starting with. What we were
7 starting with is an area that is commercially or industrially
8 modified. It is a timber producing area. It is outside of
9 any management plan or prescriptive type of -- there is no
10 prescriptions that exist in this area. So what we have is we
11 don't have what the Forest Service has potentially within
12 their larger planning areas. That is VQO. There is no
13 damaged visual quality objective within the project area.
14 The Forest Service has those things so it is easier to
15 analyze against that baseline condition. So what we needed
16 to do was to pull together a type of analysis where we could
17 actually establish that baseline without going out and doing
18 a full-blown planning level analysis at a larger scale.

19 Although I think that if you look at processes
20 between the BLM and the Forest Service there are some
21 similarities in the way that those things are established
22 and the way that we established a baseline taking into
23 consideration what uses had previously been there, what
24 types of uses are expected to be there, and how that relates
25 to the rest of the landscape. So I think that the idea here

1 is that we see the Forest Service process, and I've used
2 this process several times on forestland revisions where
3 you're doing a large scale planning assessment, and you're
4 trying to establish a management direction within specific
5 areas and set those aside. And the BLM process is the same
6 way.

7 At the planning levels which happens every five to
8 ten years you go out and reestablish what those are, and
9 it's easy then to go back and say, okay, how much has
10 changed in issue from this established VQO, this established
11 VRM? In the project area there was nothing there. Nothing
12 was said in terms of visual analysis except for what the
13 county might have in the background, but so our idea was to
14 take these two processes because of what I just stated the
15 linear features of it, the corridor features of it, the
16 timber features of it, the landscape peripheral, and combine
17 those and come up with a process for evaluating and
18 disclosing the impacts. Again this is not something that I
19 dreamt up in the middle of the night. It has been used in
20 the past. We made some modifications to it based on the
21 project and that happens relatively often in this process.

22 Q. If you look at Table 4.2-4 on page 4.2-29, I note
23 that some of the explanations refer to or relate to some
24 average level of scenic value. For example, low visual
25 quality is one that has below average scenic value.

1 Moderately low is one that has below average scenic value,
2 but not low scenic value. What are these being compared to?
3 What is the database from which you determine whether
4 something is below average or not?

5 A. These values are established based on again going
6 back to those attributes that the Federal Highway
7 Administration SMS that says what the average scenic value
8 constitutes or moderate scenic value constitute. And so what
9 we did with those was took some of those differing types of
10 information from those two types of processes and embed them
11 into this rating. What we looked at initially was the whole
12 idea of retention, partial retention and preservation, and
13 those key elements and then worked those into ones that in
14 terms of let's expand this another two or three degrees and
15 allow us to have a little bit larger rating area so that we
16 can move the project into differing ratings, if necessary.

17 If there are discrete differences within the
18 landscape that we need to move these back and forth we would
19 have that. So what we actually did here was if you notice
20 the BLM has four classifications, the Forest Service has
21 five, and there's six on this little chart. What we tried
22 to do is add an additional one into it. So relatively what
23 we've done here is again going back to what I said is we
24 took these two processes, folded them together, and
25 developed some criteria that we could evaluate our baseline

1 information, and the interdisciplinary team got together and
2 helped modify. This was already established in some other
3 reference documents, and then we also then took our project
4 area and looked at the baseline conditions for that based on
5 this criteria which was embedded with all the other criteria
6 from SMS and based on BLM methodology.

7 Q. I guess what I'm asking you is this. I'm assuming
8 based on this table that you assigned these values to the
9 land, to the city of the project.

10 A. Would you repeat that.

11 Q. Yes. You came up with a rating system here that is
12 numerical. I'm assuming that this was somehow translated
13 onto a map someplace that showed the scenic quality scale of
14 different areas from the project area; is that correct?

15 A. It was by viewpoint.

16 Q. By viewpoint. So there was a transfer or an
17 assignment of these numbers to the viewpoints. Correct?

18 A. Yes, there was.

19 Q. My question is this: When you say something is
20 below average scenic value are we looking at -- and maybe you
21 said this earlier and I didn't understand it. Are we looking
22 at the project area, the Gorge, the state, the universe as a
23 whole to determine where this falls on the scale?

24 A. We're looking at the project area specifically.

25 Q. So if we're doing that project in say Yosemite

1 National Park where everything is outstanding, you would
2 still have below average scenic value because you're only
3 looking at that. If you have to grade it within the project
4 area and that while you may have something that is below
5 average scenic value for Yosemite, it might still be a
6 fantastic scenic value for anywhere else. Does that question
7 make sense?

8 A. No, not really.

9 Q. All right. Let me ask it again. You indicated
10 that to determine whether something is below average,
11 exceptionally high visual quality, or any of these other
12 criteria you used the project area as the database.

13 A. Yes.

14 Q. If you're working with an area that the whole is
15 above in terms of scenic values is higher than most other
16 places, but you have areas within the project area that
17 differentiate, there are also you've got some are better than
18 others. If you're only using the project area as a database,
19 then you would still come up with some areas that are below
20 average even if you're in the middle of Yosemite National
21 Park.

22 A. Given this area there is potential from specific
23 viewpoints based on the criteria that we use that you might
24 come up with something that is below outstanding. It could
25 move down to high visual, and if you take a look at Yosemite

1 National Park or you take a look at Yellowstone National
2 Park, there are those types of aggregations within the park
3 themselves. It's not one brand that is outstanding for the
4 whole park. It does have a high or moderate scenic quality
5 within those park areas so it's not uncommon to see that.
6 I'm not sure that question make any sense.

7 Q. I'm not asking whether it's common or not. I want
8 to make sure I understand. You're saying that you used the
9 project area. Let's take Yosemite National Park. You use
10 Yosemite National Park as a project area. There are going to
11 be places within that park that are exceptionally high visual
12 quality, and if you're using that to determine the average
13 there's also going to be places that are below average; is
14 that correct?

15 A. Yes.

16 Q. Even if you had the same scenery that's below
17 average in Yosemite National Park, and you put it in Kansas,
18 it would be high compared to areas in Kansas where it might
19 be below average compared to the rest of Yosemite National
20 Park. Is that fair to say?

21 A. I think you're playing games with your mind here.
22 I mean why would you do that? If you're assessing a project
23 or I don't want pieces of this and try to figure out how it
24 fits over in Kansas, that doesn't make any sense. Why would
25 I do that?

1 Q. Because you come up with a conclusion. You come up
2 with a rating scale that includes below average scenic value.
3 You're telling me that to determine what's average you look
4 at the project area as a whole. You may have an area within
5 the project area that would be of less scenic value than the
6 rest of the project but still be outstanding scenic value
7 compared to anywhere else; is that correct?

8 A. I'm not tracking what you're trying to do here. I
9 don't know. What we did is we took a look at the project
10 area. We established a baseline condition that was based on
11 all the things that I just talked about and using this table.
12 When you get into the mixing and matching that --

13 Q. I'm not mixing and matching, and I'll try one more
14 time.

15 MR. McMAHAN: When you said this table for the
16 record would you tell us the table you're pointing to.

17 MR. KAHN: This is Table 4.2.4 on page 4.2-29.

18 BY MR. KAHN:

19 Q. The landscape for which you determined what is
20 average is the project area. Correct?

21 A. The landscape that we determined our baseline
22 condition would be the project area.

23 Q. So if the project area is of general outstanding
24 scenic value, let's assume that's the case for whatever
25 comprises outstanding scenic value. Within that outstanding

1 scenic value there are some places that are even more scenic
2 than others, and there's some places that are even less
3 scenic than others. In that scenario would those areas that
4 were less scenic than others be given a rating under this
5 scale of one or two?

6 A. When we went through and did the baseline
7 conditions for these things there were ratings that stemmed
8 from one to five I believe as I recall. I'm not sure. But
9 anyway, yes, in this project area there were differing
10 ratings for the baseline condition through this process.

11 Q. So you come up with an area that is below average
12 scenic value based on your baseline study. My question is if
13 you were to compare -- well, actually you know what? I think
14 you've answered the question. I will leave that alone.

15 I'd like to address your attention to viewer
16 sensitivity analysis. Is the viewer sensitivity analysis
17 intended to capture the expectations of the viewer at a
18 particular viewpoint or corridor?

19 A. The viewer sensitivity assessment takes into
20 consideration several different things. It takes into
21 consideration the number and type of viewers. It's outlined
22 on 4.2-30. The viewer conditions and the quality of the view
23 also takes into consideration the type of viewer. I mean if
24 you continue to read on it basically outlines exactly what
25 those parameters are.

1 Q. But you list the factors in the application as the
2 number of views, the viewing conditions, and the quality of
3 the view; is that correct?

4 A. That's correct.

5 Q. Are there any factors missing here that are used in
6 the Highway Manual?

7 A. There are some things that -- no. Well, yes there
8 are. There are some things the Federal Highway in this thing
9 that has to do with public preference and the SMS also has
10 that data. Also data is embedded in the public preference
11 portion of this into the next category, the principal types
12 of viewer. That would be the residential viewers and their
13 preference. Road viewers have a different preference or a
14 different perception of what they want to see if they drive
15 along the road. Residential viewers have a different one
16 too. So I think going back the answer is no. We embedded
17 those principles that were in from the FHW process and the
18 SMS.

19 Q. You just said the answer was no. I thought you
20 said at the beginning of the answer that the answer is yes.

21 A. Well, I said yes because we didn't include that
22 into the upper position of this, number and types of viewers,
23 but then as I remember that this has been a couple years that
24 we did it. So some of this stuff is just being refreshing.
25 I'm being refreshed on it at the time, although I've studied

1 to some degree. We have to remember that as I got to the
2 second section of this and realized that portions of it might
3 have been left out of the upper sections where it's included
4 in the bottom section.

5 Q. Is there any factors that are included in the
6 Forest Services Scenic Management System that are not
7 included here to determine visual sensitivity assessment?

8 A. Yes, the Forest Service and the FHW process
9 suggests that it might be good to do a public input scenario;
10 however, I think what we did with this process is we
11 basically looked at public comments and public input after
12 the initial draft, and what we did in response to those
13 comments is actually added I think four or six additional
14 KOPs, or key viewing areas --

15 Q. KVAs?

16 A. -- based on that. So even though we didn't do a
17 formal public outreach process specific to visuals, our
18 formal public outreach process and relationship to the
19 project gave us feedback into the visual expectations of the
20 public to the point that we modified what our analysis needed
21 to do.

22 Q. This combination of the different methods that you
23 said you and your colleagues have prepared has that ever gone
24 through any type of peer-review process?

25 A. It has gone through an internal peer review

1 process, yes.

2 Q. Internal to your company?

3 A. Yes.

4 Q. But nothing outside of your company?

5 A. No.

6 Q. Please turn to Exhibit 8.13c again which is the
7 Highway Manual.

8 JUDGE WALLIS: Let's be off the record for a
9 moment.

10 (Discussion off the record.)

11 JUDGE WALLIS: Please proceed.

12 A. What page were you on?

13 BY MR. KAHN:

14 Q. It's page 68 of the exhibit. Turn to page 68. Do
15 you have that?

16 A. I'm sorry. Which page?

17 Q. Sixty-eight.

18 A. Yes.

19 Q. Doesn't that indicate that cultural importance is a
20 key factor in sensitivity analysis?

21 A. Yes, it is, and that was also included in our
22 assessment.

23 Q. You go onto the next several pages. Doesn't it
24 also indicate that history and recreational resources of the
25 area are to be considered as well?

1 A. And they were also.

2 Q. Can you show me where the history of the area was
3 included in the sensitivity analysis?

4 A. When you take a look at the types of users that we
5 have here, also what we did -- as part of this analysis what
6 we have is the cultural resource analysis that kind of goes
7 hand in hand -- not hand in hand with the visual, but
8 actually it's in support of it. So as part of that
9 interdisciplinary process when we do our analysis we take a
10 look at the cultural resource analysis that's been prepared
11 at the same time and then we have an interdisciplinary
12 discussion with those other resource people. These processes
13 have to be done transparently. I mean if we don't do it that
14 way and talk to each other as we go through this thing, then
15 we don't have an understanding about what we're asking,
16 assessing is what I mean. So set it up, had a long
17 discussion with not only cultural resource people about what
18 attributes of the area are significant from a Native American
19 standpoint but also from our own historic preservation, our
20 differing types of responsibilities. And also what we did is
21 took a look at reference material that's out there. I mean
22 we definitely took a look at historical accounts of the area.
23 I have an understanding of that. I mean I'm from this area.
24 I know about Lewis and Clark. I know about what happened
25 down in the Gorge, and I know about hydropower and all the

1 other things that have happened through that process.

2 So it's not like we didn't include that into an
3 understanding in the background of what was significant
4 about this area. Also again we have to come back to the
5 point here is that we also had an understanding of how this
6 particular project area had been used historically and into
7 the current time, and that's totally different than how the
8 Gorge itself is being used. So we have to make sure we keep
9 that differentiation happening through this process. So we
10 did a larger scale understanding of how things came about in
11 the greater Gorge area, and then we also took a look at
12 Whistler's Ridge and the project area specifically, and what
13 had happened there over the last 40 to 60 years and they are
14 totally different.

15 Q. This transparency and understanding of the
16 background is that anywhere in this section of the ASC or is
17 this all just in your internal process?

18 A. This is a part of this internal process, but also
19 it's part of the process that's identified in the SMS and
20 FHWA as part of the interdisciplinary process. Anyone who
21 works on resource evaluations or resource studies, NEPA/SEPA,
22 anything that has to do with disclosure of impacts in the
23 context of intensity have an understanding of how that
24 process works.

25 Q. Well, now the Federal Highway Manual according to

1 this refers you to have to -- let me back up.

2 In terms of assessing viewer sensitivity the
3 Highway Manual says cultural significance in visual
4 resources must be documented. You said it was. I'm asking
5 you where in the record that was done?

6 A. The cultural resource discussion is probably within
7 the cultural resource analysis report.

8 Q. Let me be a little bit more precise. Would you
9 agree that the Lewis and Clark National Historic Trail is
10 part of the history and the culture of the area?

11 A. I would agree.

12 Q. Is there anyplace in the visual sensitivity
13 assessment where the impact or the cultural significance of
14 the Lewis and Clark National Historic Trail is discussed and
15 analyzed as stated in the viewer sensitivity section of the
16 Federal Highway Manual?

17 A. We address the trails and the significance of
18 trails from a recreational standpoint, but also again let's
19 differentiate between what's in the Gorge and what's in the
20 project. So, yes, trails are.

21 MR. KAHN: Your Honor, if you could ask him to
22 address the question. I'm asking a specific question as to
23 where this section of the ASC or anywhere in the record
24 there is an analysis of the cultural significance to the
25 Lewis and Clark National Historic Trail.

1 MR. McMAHAN: Your Honor, I think he was trying to
2 answer that question.

3 A. The cultural resources report has an indication of
4 what the trails and the significance of those trails are. We
5 in turn talked with cultural resource, the archaeologists,
6 the cultural experts relative to what their studies found
7 about these specific trails. How we addressed trails and how
8 we addressed roads is basically based upon where we chose our
9 KOPs or key viewing areas (KVAs) and those are addressed in
10 how we simulated what the view from those particular areas
11 would be into the project area.

12 Q. Did the discussion of the Lewis and Clark National
13 Historic Trail in the cultural resources section pertain to
14 visual sensitivity assessment?

15 A. It has a bearing on the visual sensitivity
16 assessment based on the information that we had concluded
17 from the cultural resource people in the interdisciplinary
18 process.

19 Q. Is there anything in the cultural resources section
20 discussion of the Lewis and Clark National Historic Trail
21 that specifically addresses in writing as part of this record
22 the cultural significance of that trail as to viewer
23 sensitivity? It's a yes or no question.

24 A. Not as related to viewer sensitivity directly.

25 Q. Thank you.

1 A. Not directly to viewer sensitivity. It is
2 addressed through the process that I just had described.

3 Q. Even though the Highway Manual says with viewer
4 sensitivity you should address the cultural significance of
5 the resource.

6 A. Again I'll say that we addressed that through the
7 interdisciplinary process.

8 Q. And I'm going to ask you the same question. Is
9 there anyplace in the viewer sensitivity of the application
10 that addresses the cultural significance of the Historic
11 Columbia River Highway? Another yes or no question.

12 A. Yes.

13 Q. Can you tell me where in the viewer sensitivity
14 assessment of the ASC?

15 A. You said a yes or no question. There is a
16 discussion of the Lewis and Clark Trail and the cultural
17 significance of.

18 Q. As to viewer visual sensitivity assessment?

19 A. Not directly as to viewer sensitivity, although
20 again that portion of it through the interdisciplinary
21 process was made a part of the assessment itself and weight
22 on impact.

23 Q. But there's nothing in the record about that.
24 That's your internal determination of what should be included
25 in the report; is that correct?

1 A. That is part of the interdisciplinary process.

2 Q. So someone who's reviewing this to determine
3 whether you actually considered those he has no idea whether
4 it was done because it's an internal process. Correct?

5 A. They would have it because there would be that
6 indication that we looked at trails specifically and roadways
7 specifically and adopted the KVAs based on that.

8 Q. Let's look at the factors used in assigning values
9 to viewer sensitivity. At page 4.2-30 the application
10 provides descriptions of low, moderate, and high sensitivity
11 viewers. It states that the low levels of sensitivity are
12 assigned to areas five miles or more from the closest turbine
13 where a wind power project would be distant and a relatively
14 minor element of the overall landscape. If someone is
15 standing at a scenic viewpoint looking out over broad
16 landscape won't they be sensitive to the entire view?

17 A. What does that have to do with low level and
18 turbines?

19 Q. I'm going to ask the question again. If someone is
20 standing at the scenic viewpoint and looking out over a broad
21 landscape won't they be sensitive to the entire view?

22 A. Yes, they would be sensitive to the entire view.

23 Q. Whether that was more than five miles away or less
24 than five miles away?

25 A. What's less than five miles away?

1 Q. The view. What the person is looking at.

2 A. Yes, they would see whatever they wanted to see in
3 that view, whether it would be 5 miles, 10 miles, 15 miles,
4 or whatever, yes, if they were looking for something
5 specifically in that view no matter where they are standing
6 from they would be.

7 Q. At page 63 of Exhibit 8.13c, that's the Highway
8 Manual, it states activities such as driving for pleasure or
9 relaxing in scenic surroundings can encourage an observer to
10 look at the view more closely and at greater length. Won't
11 these viewers be sensitive regardless of distance?

12 A. Yes, they will. We demonstrated the sensitivity of
13 those viewers.

14 Q. But doesn't the ASC make an assumption that viewers
15 seeing a turbine from five miles or more away would have low
16 sensitivity to the turbine because it's five miles away?
17 Doesn't that flat out tell you what the rest of the analysis
18 is based upon?

19 A. That says the relative sensitivity of it would be
20 reduced based upon that distance.

21 Q. But on 4.2-30 under the bullet of Low 1, it states,
22 low levels of sensitivity are assigned to areas five miles or
23 more away from the closest turbine. That's regardless of any
24 other factor?

25 A. No, that's not regardless of any other factor.

1 That's taking into consideration the viewer types, again
2 looking at sensitivity embedded in this determination of the
3 area at the Low 1 on the KVAs at a low. It was based on
4 other factors that are above in this analysis. You've got to
5 take into consideration the analysis itself. It brings you
6 down to being able to add your criteria to low, moderate, or
7 high.

8 Q. But I'd like you to look at this, Mr. Pearson.
9 Under low you make there's a statement low-level sensitivity
10 are assigned to areas five miles or more from the closest
11 turbine. That's a flat out assignment of low. Something
12 that's not more than five miles away; is that correct?

13 A. Those that are five miles away or more will have a
14 potential to be low levels of sensitivity, but at the same
15 time you have to take into consideration what type of view
16 you're talking about. Where is the view that your viewing
17 is? And the particular KVAs, key observation point, where is
18 that? So it is not just this criteria that we're basing it
19 on. We didn't just come out and say that everybody five
20 miles away has low sensitivity. What we did is we said let's
21 look at the people that are five miles away. Those people
22 that are five miles away if they're residential viewers they
23 have different types of sensitivity so we rated that. Then
24 we take a look at this road viewer. That's a little
25 different.

1 So they might have a view with five miles the
2 sensitivity for that view might end up to a moderate or even
3 a high based on those type of viewers. We can't just take
4 this in the context of it. This is criteria for how we
5 would put a low, moderate, high. The five miles and the
6 zero to five miles are part of the last piece of information
7 that goes into these things.

8 Q. Okay. Then I'm trying to understanding. As I read
9 this it makes a flat out assignment of low if the area is
10 more than five miles away from the closest turbine. Is that
11 a correct statement what I just said?

12 A. No, that is not a correct statement.

13 Q. Then tell me how what I said is inconsistent with
14 the sentence that I read on page 4.2-30.

15 A. It says that low level can be assigned to those
16 areas of sensitivity that are five miles or more away because
17 of how the view has changed at that distance. What has to be
18 brought into this factor, all those factors are up above.
19 Some of the viewers are five miles away in maybe a roadway
20 travels. They have a different type of sensitivity to that.
21 So some of these may be workers on the road who never look
22 up, and they might have different sensitivity. Those things
23 were brought into play for this analysis also. So with this
24 Low Level 1 the criteria for that is not just the five miles
25 or more. It has to do with principal types of viewers and

1 also the factors of the landscape scenery.

2 JUDGE WALLIS: We're getting a little repetitive
3 here. I'm asking you to move on.

4 MR. KAHN: He's not answering the questions. I'm
5 asking him the questions and I'm not getting answers, and
6 I'm going to continue to ask him until I get it.

7 BY MR. KAHN:

8 Q. Can you tell me where there is anything in the
9 definition of Low 1 that pertains to anything other than the
10 distance?

11 A. In this particular paragraph?

12 Q. Yes.

13 A. No, I can't, but I can tell you from the analysis
14 standpoint if you read this whole thing and you go page by
15 page and you take a look at the appendix materials, you will
16 have an understanding that this is rolled together in the
17 process. This is not based on this one line in this section.
18 It's based on a comprehensive analysis that took a long time
19 to put together and it is not specific to a five-mile sign.

20 JUDGE WALLIS: Again, I think that we are going
21 around this same circle so I suggest we move on.

22 MR. McMAHAN: Your Honor, I would just suggest if
23 he wants to actually understand Mr. Dautis' methodology he'd
24 take him through the rest of the appendix including the
25 summary table on 4.2-5 which clearly identifies exactly what

1 Mr. Pearson's saying which is --

2 MR. KAHN: Mr. McMahan is testifying here and it's
3 inappropriate. There's not a question pending.

4 BY MR. KAHN:

5 Q. Have you reviewed the National Scenic Area
6 Management Plan's description of scenic resource inventory?

7 A. We did prior to starting the analysis process.

8 Q. So you're familiar with that?

9 A. I am, yes. Again, as I've said it's been a few
10 years since we went through with any degree of specificity.

11 Q. Could you turn your attention to Exhibit 8.15c
12 which is excerpts from the original Columbia River Gorge
13 Management Plan?

14 A. 8.15?

15 Q. Yes. It's the management plan of the Columbia
16 River Gorge National Scenic Area. Do you have that?

17 A. Yes, I do.

18 Q. At page 1-1 and 1-2 are there descriptions of the
19 original scenic resource inventory prepared by the Forest
20 Service and Gorge Commission?

21 A. I'm sorry. Would you restate that?

22 Q. Yes. In pages 1-1 and 1-2 is there a description
23 of the original scenic resource inventories prepared by the
24 agencies?

25 A. It says inventories and studies so I'm assuming

1 that they would have without having read it again.

2 Q. It talks about landscape sensitivity which combines
3 landscape significance with visual absorption capability; is
4 that correct?

5 A. That is correct.

6 Q. Is this something different than viewer
7 sensitivity?

8 A. There's a little difference in how landscape
9 sensitivity -- yes.

10 Q. Okay.

11 A. I'll keep my answers short.

12 Q. Thank you. Are you familiar with management plans
13 description of the key viewing areas or KVAs?

14 A. Yes, I am.

15 Q. Does it indicate on page 1-7 that important public
16 roads, parks, and other vantage points providing public
17 scenic viewing opportunity shall be designated as key viewing
18 areas?

19 A. Yes, it does.

20 Q. In the viewer sensitivity analysis that you
21 conducted for each individual viewpoint is there any
22 reference to any of the simulated viewpoints being KVAs?
23 Some of them are KVAs, but in your analysis is there a
24 reference to them being KVAs?

25 A. A specific reference as to whether or not these

1 KVA's are also the KVA's identified in the management plan?

2 Q. Yes.

3 A. No, there is no -- not as I recall. I don't think
4 there's a direct reference. There is an understanding of
5 where these existed, but there may not be a direct reference.
6 However, I'm not sure, but they were definitely identified up
7 front and an understanding of why they existed.

8 Q. If a viewer visits a designated scenic viewpoint
9 for the specific purpose of seeing the view and the person is
10 highly sensitive to alterations of the landscape does it
11 really matter whether the contrast is developed in four
12 miles, five miles away?

13 A. Would you restate that.

14 Q. If a viewer visits a designated -- no, I'll
15 withdraw the question. I'll just ask something else.

16 If the viewer goes to a key viewing area or
17 sensitive area and expects a pristine view shed, does it
18 matter to that viewer if a highly contrasting and highly
19 noticeable development is two miles or ten miles away as
20 long as it is visible?

21 A. Yes, it does.

22 Q. So you disagree with Mr. Apostol regarding whether
23 distance should be factored into viewer sensitivity analysis?

24 A. Distance should be factored into the viewer
25 sensitivity analysis, and that's people at a more distant

1 view that lessens that impact.

2 Q. Would you agree that Mr. Apostol's testimony
3 recognizes that distance plays a role in a scenic impact
4 analysis?

5 A. As I believe he discussed the fact that he didn't
6 feel distance had relevance to the impact assessment and we
7 acknowledged otherwise.

8 Q. I'll find it for you in a minute, but he
9 acknowledges that contrast is reduced as distances grow
10 larger. Isn't that consistent with your position?

11 A. Yes.

12 Q. So it's really not fair to say that his testimony
13 is that distance does not matter.

14 A. I'm not understanding the context of your question.

15 Q. You just acknowledged that if he said the contrast
16 is reduced as distances grow larger, that's consistent with
17 your position.

18 MR. McMAHAN: Mr. Kahn, would you point him to
19 where you're reading from in Mr. Apostol's testimony?

20 BY MR. KAHN:

21 Q. We'll come back to that. Are you familiar with how
22 the Highway Manual treats the distance from objects for
23 purposes of sensitivity?

24 A. Yes, I am.

25 Q. If I could call your attention back to 8.13c which

1 is the Federal Highway Manual.

2 A. Yes, I have it.

3 Q. If you turn to the last page in this exhibit page
4 116, do you have that?

5 A. Yes.

6 Q. Does it refer to the middle ground as being a
7 critical area?

8 A. Yes, it does.

9 Q. You can look at it if you want or just answer if
10 you know, but doesn't the BLM manual make a similar
11 observation that foreground and middle ground zones are more
12 visible to the public and changes are more noticeable and
13 more likely to be driven with public concern? This would be
14 on page 4 of Exhibit 8.11c.

15 A. Let's go back to the question. Yes, distance makes
16 a difference.

17 Q. Okay. So you agree with that part of the BLM
18 manual as well?

19 A. Yes, they look at foreground and so does Forest
20 Service. Scenic area analyses have always been done with
21 these type of projects.

22 Q. Doesn't the Highway Administration acknowledge that
23 the duration of the viewing experience is one element in
24 evaluating viewer sensitivity?

25 A. Yes, I do.

1 Q. And that residential viewers are generally more
2 sensitive?

3 A. Yes, they are.

4 Q. And that's because they're in one place looking at
5 something?

6 A. That's correct.

7 Q. Generally speaking -- well, would you say, would
8 you agree that residential viewers are pretty sensitive to
9 alteration of views?

10 A. I don't think you can make that general of a
11 statement. I think that residential viewers probably
12 depending on the type of project. I mean let's say, for
13 instance, if you're a farmer and you would probably see
14 changes differently than someone else. So I think that
15 residential viewers are probably something to that in my own
16 back yard scenario, and I also think that differing types of
17 change you couldn't generalize.

18 Q. At page 4.2-31 of the ASC say that high levels of
19 sensitivity are generally assigned to those cases where
20 turbines would be potentially visible within a half or less
21 from residential properties, heavily traveled roadways, or
22 heavily used recreational facilities; is that correct? It's
23 at the top of page 4.2-31.

24 A. First paragraph?

25 Q. Yes. I believe it's the last sentence in the

1 paragraph, Bullet Point High 3?

2 A. What was the question?

3 Q. Is that a statement you wrote?

4 A. Yes.

5 Q. So residents are generally not sensitive to views
6 more than half a mile away despite the long viewing duration?

7 A. That's not what this says.

8 Q. Well, this says to me high levels of sensitivity
9 are generally assigned in those cases where turbines would be
10 potentially visible within a half mile or less. So that
11 means that an area where turbines would be potentially
12 visible within one mile for residential properties are not
13 high level to sensitivity?

14 A. This is the same discussion we had on Low 1
15 scenario. These are descriptors to help take other
16 information and pull it in. It doesn't say that if you go
17 outside the .5 miles that that sensitivity changes. That
18 just means that we have to assess it differently.

19 Q. So someone would have to scour this entire document
20 to confirm that that sentence doesn't mean what it does?

21 A. No, it wouldn't at all. Again, like I said, you go
22 back and start from the first when you went through this and
23 look at the appendices and those things that are attached,
24 and I think you'd find that it plays out appropriately.

25 Q. At page 17 your rebuttal testimony you were asked

1 this question: Mr. Apostol testified that existing visual
2 landscape surrounding the project site includes dramatic
3 mountain and gorge vistas, steep rocky cliffs, pastoral
4 lands, open space areas, recreational lands, and the Columbia
5 River. Landforms in the vicinity are steep, complex, and
6 dissected by deep ravines. This is on page 3, line 9. As an
7 evaluation of the existing landscape forms a basis for visual
8 impact assessment is there anything missing from this
9 description? That was a question that was asked of you.

10 Your response was that Mr. Apostol's description
11 effectively ignored the commercial and industrial components
12 of the landscape which need to be understood in order to put
13 the project setting in proper context. Massive
14 hydroelectric dams, high voltage transmission lines, and
15 multiple transportation facilities are landscape components
16 that need to be recognized. Significant commercial and
17 industrial modifications have occurred throughout this
18 landscape and the mark of human development cannot be
19 discarded in assessing the existing visual landscape. That
20 was your answer?

21 A. Yes, that's what was in there. Still don't know
22 the page number.

23 Q. Of your testimony page 17.

24 A. Seventeen?

25 Q. Yes. Beginning of the question started line 5.

1 Your answer started in line 12. It appears that you did not
2 disagree with Mr. Apostol's assertion that elements of the
3 landscape setting aren't actually present in the landscape
4 surrounding the project. In other words, you refer to
5 massive hydroelectric and high voltage transmission lines.
6 Are those in the immediate vicinity of the project area?

7 A. No, they're not. Yes, they are within the vicinity
8 of the project area, yes.

9 Q. How close are any of those to the project area?

10 A. Ten miles.

11 Q. Okay.

12 A. No, excuse me. If you look at a couple of
13 viewpoints that we assessed here, there are power lines that
14 move across the project area into and outside the project
15 area, and they're not just a post and pole. They're massive
16 power lines that administer the power out from the Gorge
17 across the project area and into other areas. So excuse me.
18 The dams are a little further away, but the infrastructure
19 that supports those dams crossover into the project.

20 Q. What about industrial use, what's the nearest
21 industrial use?

22 A. I believe the nearest would be the lumber mill that
23 is just below the project area or a little bit to the west of
24 it.

25 Q. Define just below. Are we talking about a hundred

1 yards or five miles?

2 A. We're talking about the river.

3 Q. So that would be several miles.

4 A. I don't believe it would be several miles. Two or
5 three miles, something like that.

6 Q. At page 4.2-32 the application states that there
7 are two distinct landscapes. The landscape outside the
8 scenic area boundary and the landscape inside the scenic area
9 boundary. Did you write that? Page 4.2-32.

10 A. We need to have this all in one look. What page?

11 Q. 4.2-32.

12 A. And section?

13 Q. Under regional landscape setting section. Is that
14 your language?

15 A. Yes.

16 Q. What geologic or geographic feature makes these two
17 landscapes distinct?

18 A. That question is based on --

19 Q. Well, you stated that there are two distinct
20 landscapes. Is there a geologic feature that separates those
21 two landscapes?

22 A. To some degree there are geological features
23 because what you have is you have a ravine area, and then you
24 have more of a plateau of where your timber harvest area is
25 up on the top of the plateau, particularly on the Washington

1 side of the river. So, yeah, there is a geographic break to
2 that or a geologic break to some degree because of your steep
3 cliffs and then your flat areas on the top, but more so there
4 is a line break for where the Gorge area stops and private
5 development begins.

6 Q. So you're saying that you could be standing at a
7 point say on the Oregon side where you could see the
8 Washington portion of the scenic area and beyond? You're
9 telling me that a viewer is going to be able to discern where
10 the boundary is?

11 A. No, not specifically where the boundary is, no.

12 Q. That's what I thought you just said. So to the
13 casual viewer who doesn't know where the National Scenic Area
14 is they're not going to know that there's a difference.
15 They're just going to see the entire landscape, whatever that
16 consists of; is that correct?

17 A. That is correct. They are also going to see the
18 attributes of that landscape too.

19 Q. Also at page 4.2-32 the application states that
20 areas south of the project within the scenic area are
21 designated as urban and GMA. Is that your writing or your
22 understanding? This is in the bottom paragraph about the
23 second sentence.

24 A. Yes.

25 Q. By stating that were you intending to imply that

1 these are areas subject to high-level development?

2 A. No.

3 Q. What was your point in including that then?

4 A. That just as a designation our designators are GMA,
5 growth management.

6 Q. Isn't it true that there's areas designated open
7 space within the vicinity of the project area? Are you aware
8 of that?

9 A. Yes, within the Gorge boundary.

10 Q. Yes, but in the vicinity of the project area?

11 A. Well, in the vicinity I believe you're saying --
12 what's your determination of vicinity?

13 Q. Within a shorter distance in the areas near an
14 industrial facility.

15 A. I don't believe it's within the shorter distance.

16 Q. Okay. All right. Are you familiar where Underwood
17 bluff is?

18 A. Yes.

19 Q. Is that closer to the project site than any
20 industrial facility?

21 A. I'd have to measure that and make sure of that.
22 They're probably very close or about the same.

23 Q. At page 4.2-33 this is the 1, 2, 3, 4, 5th
24 paragraph. It states that State Route 14 in this area is a
25 recognized scenic road. Do you agree with that?

1 A. Yes.

2 Q. Why don't we have any simulations completed for the
3 view from any part of this scenic roadway?

4 A. I think Mr. Watson had explained that earlier in
5 his discussions. Basically that from SR 14 when they travel
6 through that area that the project was not visible through
7 screening or through just topographic rise, and so it was
8 determined that other than a brief moment that would be no --
9 it wasn't necessary.

10 Q. Where is that brief moment where turbines would be
11 visible from the scenic road?

12 A. I believe he covered that in his testimony.

13 Q. Do you recall that?

14 A. No, I don't.

15 Q. At page 4.2-5 -- actually let me I will withdraw
16 that.

17 When you're discussing the local landscape did any
18 of that include the National Scenic Area for purposes of any
19 type of analysis of the local landscape setting?

20 A. I think you just read that section in there on top
21 of regional landscape. That was the part right there.

22 Q. So the answer is yes.

23 A. Yes.

24 Q. What about part of the local landscape setting as
25 opposed to the regional landscape setting?

1 A. The project area specifically?

2 Q. Yes.

3 A. Yes.

4 Q. It includes the National Scenic Area as part of the
5 local landscape setting?

6 A. I'm not following you.

7 Q. Hang on. What area did you include in your
8 analysis of the local landscape setting?

9 A. The project area specifically. I think it's
10 outlined in one of these maps here about specific to the
11 exhibits. It says this is the project area. That's the
12 local description of the landscape there.

13 Q. Well, then why in the description of the local
14 landscape setting would you refer to State Route 14?

15 A. I'm not sure that I did.

16 Q. Well, in looking at 4.2-33 under the heading Local
17 Landscape Setting you bring into discussion State Route 14.
18 Is that part of the local landscape setting?

19 A. It's not within the project area boundary, but the
20 local landscape area when identified we probably buffered it
21 out and discussed anything on the perimeter is what you
22 normally do. We don't draw hard fast lines. The local area
23 or the project area specifically is probably anything on the
24 peripheral that may be either subjective to the project or
25 might be impacted by the project either directly or

1 indirectly or cumulatively.

2 Q. So that would include then if you're including
3 State Route 14 as part of the local landscape setting that
4 would then necessarily include all land between State Route
5 14 and the project area?

6 A. In what context?

7 Q. In discussion of the local landscape setting which
8 is what I'm talking about on page 4.2-33.

9 A. It may or may not.

10 Q. So that would include the National Scenic Area
11 area?

12 A. In what context again?

13 Q. As part of the local landscape setting.

14 A. No.

15 Q. State Route 14 which is in the National Scenic Area
16 is deemed to be part of it, but the rest of the National
17 Scenic Area closer to the project site is not?

18 A. We've discussed this already. We've looked at two
19 distinct landscapes, and we made a break from these. And one
20 was the Gorge area specific and the other was the project
21 area itself. We probably buffered again like I said a little
22 bit on the project area to include any of those areas that
23 might be indirectly or directly affected by this project.
24 Again, if you get into the gorge area the effects of the
25 Gorge area is not basically a direct or indirect effect. It

1 may be a visual effect from the specific viewpoints.

2 So going back to the regional landscape setting,
3 we discussed why we made that determination between the
4 local area landscape and the regional landscape and the
5 distinction was more of the Gorge area analysis; however, in
6 the local landscape setting we included SR 14 because of the
7 buffer that comes down off the side of the mountain.

8 Q. So again you included State Route 14 but ignored
9 the land in between. Is that what I'm hearing you say? I'm
10 not following you.

11 A. No, we didn't ignore -- we didn't ignore anything.

12 Q. Page 4.2-34, the second paragraph. Each
13 viewpoint -- actually that's not fair. I will find the exact
14 quote. Each viewpoint was analyzed and the rating was
15 applied to provide an overall average for the area. It's in
16 the second paragraph. Is that correct? It's in the second
17 paragraph. I've skipped a few words in the middle. But each
18 view point was analyzed and the rating was applied to provide
19 an overall average for the area. Second paragraph.

20 A. Yes.

21 Q. Is this a section you wrote?

22 A. Yes.

23 Q. What area was used to form the basis for the
24 averaging?

25 A. Again, this goes back to our rating tables and how

1 we come about determining those. I'm sorry. I'm going to
2 have to go back to this line that you're reading is not the
3 same thing.

4 MR. McMAHAN: Well, he's omitting a bunch of
5 words.

6 BY MR. KAHN:

7 Q. I've skipped some words. I'll read the whole thing
8 if that makes everybody happy.

9 A. If you could just point me to where it's at.

10 Q. The second paragraph. Beginning of the second
11 paragraph, the first sentence 4.2-34.

12 A. Each viewpoint was assessed using the methodology
13 described?

14 Q. Yes.

15 A. And a rating was applied to provide an overall
16 average for the area. Again, this goes back to the
17 methodology back in the front. You left that section out
18 which explains again the stuff that we've just been talking
19 about, the assessment of baseline conditions and established
20 that baseline condition, and then we made this contrast
21 rating based on the information in the text prior to that.
22 Or I'm sorry. We're talking about baseline here right now.

23 So we've used those tables and that information to
24 establish the baseline conditions for each one of these
25 viewpoints. There is no average to it.

1 Q. But to say a rating was applied to provide an
2 overall average?

3 A. An overall average rating for each one of the
4 areas.

5 Q. Does that mean that the impacts with specific
6 viewpoints are determined based on the relationship to all
7 other viewpoints in the area?

8 A. These viewpoints are assessed on its own value.

9 Q. If they're wonderful does that mean the average is
10 wonderful and everything is great, or do you rank them from
11 below average to above average?

12 A. We assessed each one and gave it a rating. It
13 might have been an average or above average, but it's a
14 rating compared to other viewpoints in the same area. It's
15 compared to just strictly on its own merits.

16 Q. But if you're saying something is above average or
17 below average there has to be an average. There has to be
18 something that's below or above so it can't be just assessed
19 on its own merits.

20 A. Going back to the methodology what we did is we
21 took that criteria and we basically outlined what it was that
22 we were going to assess going through all the attributes that
23 we've just discussed and came up with an average rating for
24 that view.

25 Q. Well, I guess it's above me.

1 JUDGE WALLIS: Mr. Kahn, excuse me. How are we
2 doing on cross-examination?

3 MR. KAHN: Oh, I've probably got another 20 to 30
4 minutes.

5 JUDGE WALLIS: Let's take an afternoon break and
6 come back at 3:25.

7 MR. KAHN: Okay. We have one potential logistical
8 issue. Following Mr. Pearson the next witness on the list
9 is Dean Apostol. This has taken longer than I think we
10 anticipated. We expected to get him done today. He cannot
11 be here tomorrow. So if we don't get him finished by today
12 we'll have to plug him in at some other point in the next
13 few days.

14 JUDGE WALLIS: Let's be off the record, please.
15 (Recess taken from 3:10 p.m. to 3:25 p.m.)

16 JUDGE WALLIS: Let's be back on the record,
17 please.

18 Before we begin let me make a suggestion to the
19 witness and counsel. That is to the witness to listen very
20 carefully to the question and answer the question, and then
21 if you need to explain go ahead and explain it. And to
22 counsel if you're not getting the answer the second time you
23 ask the question, you might think carefully about
24 approaching it from a different direction.

25 MR. KAHN: Okay.

1 JUDGE WALLIS: Mr. Kahn, please proceed.

2 BY MR. KAHN:

3 Q. Mr. Pearson, could you turn to 4.2-64, please. At
4 the very bottom paragraph the second sentence says: Given
5 its dimensions there are a few measures other than wind
6 turbine color that can be implemented to mitigate the visual
7 impacts of wind turbines. Being available for wind requires
8 turbines to be in a location that is open and highly visual.
9 Did you write that?

10 A. Yes.

11 Q. So that's your position? Do you still agree with
12 that?

13 A. I agree with that to the extent of this paragraph
14 there is only specific mitigation. There is probably other
15 things within the context of this analysis that need to be
16 considered.

17 Q. Well, okay. Let's talk about that. You said that
18 there's other mitigation measures that can be considered.

19 A. I said there might be other. In the context of
20 this paragraph this is probably that's the way it's written,
21 but there may be other ability to mitigate impacts.

22 Q. Why wouldn't they be listed here then?

23 A. Well, there's another section of this, I think it's
24 called mitigation.

25 Q. Okay.

1 A. At the end of this section or something.

2 Q. In his testimony we'll find that and I'll cite for
3 you in a minute. Mr. Apostol indicated that he stated that
4 the fundamental aesthetic problem of commercial wind energy
5 development -- this is on page 3, line 19 of Mr. Apostol's
6 rebuttal testimony. "The fundamental aesthetic problem of
7 commercial wind energy development is that it introduces very
8 large scale modern industrial structures into rural
9 semi-natural wild landscapes. Due to their large scale and
10 unique appearance modern wind turbines by their very nature
11 result in high visual contrast to most landscapes. High
12 contrast normally results in high impact to scenery." Do you
13 agree with those statements?

14 A. What page are you on? I'm sorry.

15 Q. This is page 3 of Mr. Apostol's testimony line 19.
16 You may not --

17 A. The page again? I'm sorry.

18 Q. Page 3, line 19 of Mr. Apostol's testimony.

19 A. What's the question?

20 Q. Do you agree with the statement I read?

21 A. I think my answer demonstrates what my position is
22 on that.

23 Q. Well, can you tell me what that is, please.

24 A. It's that I think -- again, you have to read the
25 full answer to the question, and that is that he's talking

1 about --

2 Q. Mr. Pearson, I asked you a straightforward
3 question. I read two sentences from Mr. Apostol's testimony
4 and asked you if you agree with it.

5 A. And I said that I agreed with it in the context of
6 what I responded to his rebuttal.

7 Q. Okay. Page 4.2-65 of the application provides
8 factors that were considered in evaluating the impacts to
9 specific viewpoints. One factor is the extent to which the
10 affected environment contains places or features that have
11 been designated in plans or policies for protection or
12 special consideration. Were you part of that team that wrote
13 that?

14 A. What page are you on?

15 Q. Page 4.2-65.

16 A. Yes.

17 Q. So relying on this criteria planned policies that
18 designate portions of the affected environment for protection
19 or special consideration should be given consideration during
20 the impacts analysis?

21 A. Yes, they should.

22 Q. Mr. Apostol was asked whether outside of the
23 regulatory framework of the scenic area if scenic area
24 inventories, designations, and protected measures would be
25 used to measure the impacts of the project and inform EFSEC

1 decision making process?

2 Mr. Apostol said it was appropriate to use scenic
3 area plans and policies to inform the impact analysis. How
4 does Mr. Apostol's testimony differ from the criteria that I
5 just mentioned in the application and to which you agreed
6 with it?

7 A. Again, we have to make a determination here of what
8 we're analyzing, and the project area itself again is out of
9 the scenic area management direction and therefore has
10 different management capability or understanding or
11 direction. So the idea that you would just simply take the
12 management direction of the Gorge and apply it to the project
13 area just doesn't work because of the -- as he stated the
14 work they put into establishing the scenic area and why that
15 line has been drawn, and the things that are held there from
16 the attributes that they have to study there. You can't just
17 take a process and apply it to another one. You have to
18 establish some guidelines to do that just like we did with
19 this particular process.

20 Q. We're not contending nor is my question asking
21 whether management direction should be applied. Let me ask
22 you this: Is any portion of the National Scenic Area within
23 the affected environment as -- well, is it in any part of the
24 affected environment?

25 A. No.

1 Q. So the affected environment is what by your
2 definition?

3 A. Is the project area boundary.

4 Q. Just the project area?

5 A. Yes.

6 Q. Okay. Did your analysis of any of the specific
7 viewpoints include any evaluation of the potential impacts
8 from the aviation lighting that would be placed on the
9 turbines?

10 A. As stated in the assessment, yes, we took a look at
11 how aviation lights would be affected and what the standards
12 for lighting on the turbines would be.

13 Q. Is it your position that the lighting does not
14 create any contrast for the scenic area?

15 A. There is contrast to the lighting that could be
16 seen by mostly residential viewers, and it would be people
17 within close proximity of the potentially road traveling
18 people. I don't think there wouldn't be an effect. We just
19 stated that it would be moderate.

20 Q. You said that the lighting would impact those in
21 close proximity?

22 A. Yes.

23 Q. Is the purpose of the lighting to be visible for
24 many miles around for airplane pilots so they don't hit the
25 turbines?

1 A. Again, we need to take into consideration the
2 topographic variability in the project area in relationship
3 to those people who are traveling on the roadways, and, yes,
4 I suppose it would be visible for people flying over.

5 Q. If it's visible from a distance for an airplane
6 pilot, wouldn't it be equally visible from the same distance
7 from a person with the view towards those turbines with the
8 lights?

9 A. I think Tom covered this, just wanted to cover this
10 in his testimony basically that essentially because of the
11 topographic variability a lot of the lines will not be able
12 to be seen by any viewer other than those flying over the top
13 of it, and that our assessment did not say it would not be an
14 impact. It just said it would be minimal because of that.

15 Q. And I never said what your assessment says. I'm
16 just asking you questions. Somebody did a number of visual
17 simulations that showed turbines visible to a number of
18 viewpoints. If the turbines are visible from those
19 viewpoints won't the aviation lighting on those turbines be
20 visible from there?

21 A. Yes, they would.

22 Q. Isn't the whole purpose of the lighting to contrast
23 with the surrounding land forms so pilots are warned about
24 flight hazards?

25 A. Yes, it is.

1 Q. At page 4.2-25 it states that flashing lights will
2 be most noticeable within one mile of the project. Does the
3 application include any analysis of the impacts of flashing
4 lights from viewpoints beyond one mile?

5 A. Just on the overall, no, that does not.

6 Q. Again, the passage I quoted that flashing lights
7 will be most noticeable. While it's most noticeable within
8 one mile isn't it true that they could be highly noticeable
9 from more than one mile?

10 A. I suppose that that's the case based on the viewer
11 position and because of the difference this project area
12 moves or elevates, so on and so forth here. There is a lot
13 of things that have to be considered in how that impact would
14 be shared.

15 Q. Is there any analysis in the application of how the
16 moving parts of the turbine will attract more attention to
17 the project?

18 A. Visually movement is based on how the viewer looks,
19 the way the viewer is in juxtaposition to that particular
20 area. Movement is something that will catch your visual
21 line, but the idea that it was assessed specific to movement,
22 no. There's nothing that says that because of the movement
23 it will be more impacted. What it says is if you could see
24 the turbine, you will see the movement. So the visual
25 assessment that looks at the impacts of where the turbines

1 are and how they are impacted by and how they're seen the
2 movement of the turbine is relative to that.

3 Q. Okay. Did I just hear you say that it's roughly
4 the same impact with something that's stationary versus
5 moving?

6 A. No, you didn't hear me say that.

7 Q. Please explain again because I didn't understand
8 what you said.

9 A. What I said was is that if you are assessing the
10 impacts of the turbines on the visual environment the
11 movement of the turbine is embedded in that impact.

12 Q. Is it fair to say that if there is a stationary
13 object and moving object the viewer's eyes, within the same
14 view shed and the same distance away, the viewer's eyes is
15 more likely to be attracted to the moving object than the
16 stationary object?

17 A. I think it's dependent on the viewer and again on
18 the duration of the view, on where the viewer is standing,
19 and seasonal differences, a lot of different things.

20 Q. Okay. I'm standing three miles away from nothing
21 between me and a stationary object and nothing between me and
22 a moving object that's 200 yards from the stationary object.
23 Is my eye more likely to be attracted to the moving object?

24 A. I am not sure. It depends on what that object is.

25 Q. If there's a turbine that is not moving and a

1 turbine a hundred yards away that is moving is my eye more
2 likely to be attracted to the turbine which has the blades
3 spinning?

4 A. I don't know. Are you more receptive to moving
5 objects or stationary?

6 Q. Okay. So it's completely subjective. There's no
7 objectivity or science to answer that question.

8 A. There is science that says moving objects will tend
9 to pull the casual observers eye toward it, although there is
10 no real science that says that always is the case. Again, we
11 have to go back to perception. We have to go back to the
12 viewer, the types of viewer. This analysis took that into
13 consideration when we looked at those subjective parameters.

14 Q. At page 4.2-28 of the application it states that
15 quote: In an era when Washington and the United States are
16 mobilizing to address climate change, aesthetic impacts of
17 renewable energy raises critical policy questions of state
18 wide and national significance. Did you write that or are
19 you part of the team that wrote that?

20 A. What was the page again?

21 Q. 4.2-28. It's in the full first full paragraph in
22 the middle.

23 JUDGE WALLIS: Mr. Kahn, if you are going to refer
24 to passages in application let's wait until the witness
25 reads that passage and then ask your question about it.

1 MR. KAHN: Yes, sir.

2 BY MR. KAHN:

3 Q. Again, it's the first full paragraph, the last
4 sentence on 4.2-28.

5 A. And the question was?

6 Q. Were you part of the team that wrote that?

7 A. Yes.

8 Q. Can you tell me how general policy debate factors
9 into any of the standard visual impact assessment
10 methodologies?

11 A. This is strictly an observation that we were moving
12 into at a time, a point we're looking at renewable energy
13 differently, we're looking at fossil fuels differently, and
14 we're looking at dependency on energy production.

15 Q. And this is something that's interesting that --

16 A. I thought that based on this thing in the context
17 of this paragraph alone is that it's saying that what we're
18 doing as a part of that is looking at renewable energy
19 through an existing energy corridor which the Gorge to some
20 degree is. It supplies a lot of energy and lot of
21 electricity to the area. So this was really just a statement
22 to say that, yeah, we need to take a look at how we look at
23 energy and energy production.

24 Q. Well, are you saying that the aesthetics impact may
25 differ depending on our need for energy?

1 A. No.

2 Q. And it's in the section discussing aesthetics?

3 A. Your point?

4 Q. I'm just asking you that question.

5 A. Yes, it is in that section.

6 Q. Thank you. If you could turn your attention to
7 Exhibit 21.06. I believe it's attached as an exhibit to
8 Mr. Apostol's testimony if it helps. It's this document.

9 A. Yes, I am there.

10 Q. At page 12 of your testimony, lines 6 through 8.

11 MR. McMAHAN: Testimony or rebuttal testimony?

12 MR. KAHN: Rebuttal testimony. I'm sorry.

13 BY MR. KAHN:

14 Q. Page 12, lines 6 through 8 do you have that?

15 A. Yes.

16 Q. You state that the visual attributes identified in
17 the area within the scenic area that's adjacent to the
18 project site as being forested which corresponds to
19 discussion in the ASC of the area's existing condition; is
20 that correct?

21 A. Yes.

22 Q. So immediately adjacent to the project looking at
23 Exhibit 21.06, first page, immediately adjacent to the
24 project area is black or forest, but there's also pastoral
25 land adjacent; is that correct?

1 That is the second page. It's the page that says
2 visual attributes. It's the second page of the document,
3 Mr. Pearson. It's a map entitled visual attributes.

4 A. My second page isn't the same as yours apparently.

5 Q. Then let me point to what I'm referring to. Keep
6 going. That one, the one that says visual attributes. So am
7 I correct in that immediately adjacent to the project is
8 forest as well as pastoral land?

9 A. I would have to take a look at this in relationship
10 to the project area again to establish that.

11 Q. We have a map on the wall there that might help
12 you. To help you orient the area to the south of the project
13 is the National Scenic Area which is the area that is covered
14 by these colors.

15 A. Right. I understand. Yes, it would be. Pastoral
16 land, no, no pastoral land.

17 Q. Are there also other types of habitat in the area
18 such as cliffs, the Columbia River, the Little White Salmon
19 River?

20 A. In which area?

21 Q. In the immediate vicinity of the project.

22 A. Yes, there are those things outside the project.

23 Q. Immediately adjacent to the project area.

24 A. Yes, there are those immediately adjacent to the
25 project area.

1 Q. So when you concluded in your testimony at page 12
2 that the area adjacent to the project site is forested, that
3 doesn't tell the whole picture, does it?

4 A. What picture are you trying to paint?

5 Q. Of what the area is like immediately adjacent to
6 the project area based on the visual attributes map that
7 we're discussing.

8 A. I'm not sure. Did I make that statement specific?

9 Q. You stated that the visual attributes map
10 identified the area within the scenic area that is adjacent
11 to the project site as being forested. That's your testimony
12 again on page 12, line 6 through 8.

13 A. Is there more to that above and beyond that
14 paragraph?

15 Q. Go read it.

16 A. I don't know. I can't find it.

17 Q. Well, I'll read then the paragraph: The visual
18 attributes map identifies the area within the scenic area
19 that is adjacent to the project site as being forested which
20 corresponds with the discussion in the ASC of the area
21 existing conditions. Note that this area was not identified
22 as special which means it was not an area with such unusual
23 or outstanding land forms or vegetation that the USFS felt
24 further study was unnecessary.

25 A. Okay. What's the question again?

1 Q. The question was whether your statement that the
2 area adjacent to the project site is forested is not a
3 complete description of the area adjacent to the project
4 site.

5 A. The discussion that I had within the context of
6 this particular paragraph or paragraphs was specific to
7 forested environments and the juxtaposition of those to the
8 project. So no -- yes, it was complete as it is written in
9 this text.

10 Q. Even though there is pastoral land adjacent to the
11 project as well?

12 A. I think if you read down I think I discussed
13 pastoral aspects of it later on in the discussion, and what
14 I'm trying to do through this whole thing is make a
15 comparison of the lines that Mr. Apostol has suggested that
16 we should probably use to extrapolate over into the project
17 area. And I was trying to make a case -- not make a case. I
18 was trying to explain what was within the proximity of the
19 project area, and this particular passage had do to with pine
20 so.

21 Q. Isn't the purpose of the visual attributes map to
22 determine what people will see when they're looking at the
23 area?

24 MR. McMAHAN: I don't think Mr. Pearson has his
25 testimony in front of him and the pages you're even

1 referring to I think he's lost like others are.

2 MR. KAHN: He has his testimony before him.

3 MR. McMAHAN: Well, he doesn't have it now.

4 MR. KAHN: Well, then let's get it to him.

5 MR. McMAHAN: He just needs to get to it.

6 So it's your rebuttal testimony, Mr. Pearson. I
7 think it's on page 12 as I'm trying.

8 MR. KAHN: Exhibit 9.02r.

9 MR. McMAHAN: I think you may be flipping through
10 the Apostol testimony now.

11 JUDGE WALLIS: Let's be off the record.

12 (Off the record to find testimony.)

13 JUDGE WALLIS: Let's be back on the record.

14 A. Yes, I'm on that page and what I'm trying to
15 discuss basically that those inventories and their
16 relationship of those to the project area.

17 BY MR. KAHN:

18 Q. What's the purposes of visual attributes now?

19 A. Visual attributes reach that which is saying this
20 is the type of lands that are within these designations.
21 It's almost always a land use. It's pastoral or it's
22 different types of attributes.

23 Q. I guess my question is in this statement where you
24 say the visual attributes map identified in the area within
25 the scenic area that is adjacent to the project site as being

1 forested that's not completely accurate, is it?

2 A. That's completely accurate in the context of that
3 statement.

4 Q. In talking about --

5 A. -- forested areas. And there are two different
6 things that are actually identified in the project area as
7 you see the visual attributes area.

8 Q. Where is there a limitation in your question, in
9 your answer, in your testimony here that says you're only
10 talking about forested areas? You make a flat out statement
11 that the area adjacent to it is forested. When I'm asking
12 you, you acknowledge that the visual attributes map shows
13 that there's also pastoral lands adjacent to the project. So
14 you're still saying your statement is correct?

15 A. Yes.

16 Q. Okay. Can you define visual absorption capability?

17 A. Visual absorption capability is a SMS term that is
18 used to describe how specific types of landscapes can be
19 absorbed to relative changes. For instance, where it's
20 particularly instrumental is in some areas where you might
21 have a timber harvest on a specific ridge top or a low lying
22 area where from a distance you may be able to absorb that
23 through the ability of the vegetation to screen that away or
24 absorb that into or that highway users the FHW process talks
25 about in terms of the visual absorption.

1 But they talk how you can make a little wind, and
2 run it in a vertical or a horizontal scenery of the
3 landscape itself so it isn't just running straight ahead
4 through it. In some ways that's what the Forest Service
5 spends their energy on their harvest units to maybe make
6 them more realistic looking and be available to absorb
7 within the context of the landscape. But also it's a
8 mechanism they use for screening highways and so on and so
9 forth for absorbing that impact of projects or of timber
10 type of activities that are ground, have direct impacts on
11 the ground.

12 Q. If you could turn to 4.2-67 of the application,
13 please.

14 A. I'm there.

15 Q. This is an analysis of visual absorption capability
16 from different viewpoints.

17 A. 4.2-67?

18 Q. Yes.

19 A. No.

20 Q. What is this?

21 A. This is a table summarizing the existing scenic
22 quality and anticipated level of visual impacts.

23 Q. And that doesn't have any connection with the
24 visual absorption capability?

25 A. No, not on an initial looking this over without --

1 Q. Can you explain to me again what that table
2 signifies?

3 A. It is a summary of the existing scenic quality
4 ratings and of the anticipated level of visual impact.

5 Q. By anticipated level of visual impact are you
6 referring to what the impacts to a viewer from that
7 viewpoint?

8 A. Yes.

9 Q. For each one of these it's low to moderate.

10 A. No.

11 Q. Or no change in one instance.

12 A. No.

13 Q. Then tell me where I've misread read this. I'm
14 looking under the category of anticipated level of visual
15 impact. I see low to moderate, moderate low, moderate to
16 low, low, no change. So everything is somewhere between
17 except for no change, somewhere between low and moderate.

18 A. That's right.

19 Q. So that means from any of these viewpoints for the
20 typical viewer they will have none of these will be a level
21 of visual impact to have turbines placed in the view shed.

22 A. That's correct.

23 Q. So if the Forest Service and the Park Service
24 commented that there were significant impacts to scenic
25 resources you disagree with that?

1 A. I stand on the analysis itself. What we did is put
2 the analysis together, went through each of these viewpoints,
3 and that's the outcome that we had based on the process that
4 we used.

5 Q. Okay.

6 A. And this is a process again as this Council has
7 seen several times and has reviewed several times, and it's
8 passed through SEPA with Wild Horse and two of the other wind
9 projects within the same vicinity. This process is nothing
10 new to the Council.

11 MR. KAHN: I believe that is all. We would ask
12 for the following exhibits be admitted, 8.11 through 8.16.

13 (Exhibit Nos. 8.11 through 8.16 offered into
14 evidence.)

15 MR. McMAHAN: Your Honor, we would stipulate to
16 that except 8.16. I don't believe there were any questions
17 on 8.16.

18 MR. KAHN: There were a number of questions on
19 8.16. He testified fairly at length about his review of it
20 and the fact that he doesn't believe the guy at all.

21 MR. McMAHAN: No, that was Mr. Watson.

22 MR. KAHN: I believe it was --

23 MR. McMAHAN: No, no.

24 MR. KAHN: Then I'll ask that 8.16 be admitted as
25 an exhibit to Mr. Watson's testimony if he was the one that

1 talked about it.

2 JUDGE WALLIS: Very well.

3 MR. PEEPLES: I'm going to object to 8.16. This
4 purports to be some type of scientific paper, if I recall,
5 with no basis for it. You know, this is different than
6 reliable hearsay from perhaps a public record.

7 MR. KAHN: Your Honor, actually we moved for
8 admission of this when Mr. Watson testified. There were no
9 objections and you admitted it.

10 JUDGE WALLIS: Very well. Are there any
11 objections to 8.11 through 8.15?

12 MR. McMAHAN: No.

13 JUDGE WALLIS: Very well. Those exhibits are
14 received in evidence.

15 Is there redirect or is there any cross?

16 (Exhibit Nos. 8.11 through 8.15 admitted into
17 evidence.)

18 MR. MARVIN: I have nothing, Your Honor.

19 JUDGE WALLIS: Ms. Drummond?

20 MS. DRUMMOND: No, Your Honor.

21 MR. McMAHAN: And no redirect.

22 JUDGE WALLIS: Now, Mr. Pearson, you're excused
23 from the stand.

24 Are we ready to proceed?

25 ///

1 DEAN APOSTOL,
2 having been first duly sworn on oath,
3 testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. KAHN:

7 Q. Mr. Apostol, can you state and spell your name for
8 the record, please.

9 A. Dean Apostol A-p-o-s-t-o-l.

10 Q. At the request of Friends of the Columbia Gorge and
11 Save your Scenic Areas did you submit prefiled testimony in
12 this proceeding?

13 A. Yes.

14 Q. And if you were to be asked the same questions that
15 were asked in the prefiled testimony under oath would your
16 answers be the same?

17 A. Depends on my memory though, yes.

18 Q. Is there any change that you wish to make to your
19 testimony?

20 A. No.

21 Q. Are you available for cross-examination?

22 A. Yes.

23 MR. KAHN: Your Honor, I move that Exhibit 21.00
24 and all of the exhibits associated with it be admitted into
25 the record?

1 (Exhibit Nos. 21.00 through 21.07 offered into
2 evidence.)

3 JUDGE WALLIS: Is there an objection?

4 MR. McMAHAN: No objection.

5 JUDGE WALLIS: Very well. Exhibits 21.00 through
6 21.07 are received in evidence.

7 (Exhibit Nos. 21.00 through 21.07 admitted into
8 evidence.)

9 MR. McMAHAN: Your Honor, at this point in time I
10 don't anticipate cross-examination, but I would like to
11 reserve for after the CFE. At this point in time I do not
12 anticipate cross-examination, but I would like to reserve
13 that opportunity after Counsel for the Environment conducts
14 cross-examination.

15 JUDGE WALLIS: Very well.

16 Mr. Marvin?

17 MR. MARVIN: I have no cross-examination at this
18 time.

19 JUDGE WALLIS: Ms. Drummond?

20 MS. DRUMMOND: I do not, no, Your Honor.

21 MR. KAHN: I certainly have nothing more to
22 redirect.

23 JUDGE WALLIS: Nothing on redirect?

24 MR. KAHN: No.

25 JUDGE WALLIS: So do Council Members have any

1 questions?

2 Let the record show that there are no questions
3 from Council, and, Mr. Apostol, you are excused from the
4 stand.

5 MR. KAHN: Good job, Dean.

6 JUDGE WALLIS: All right. Let's be off the
7 record.

8 (Discussion off the record.)

9 JUDGE WALLIS: Let's be back on the record.
10 Mr. Baker, you had a matter.

11 MR. BAKER: Thank you, Your Honor. For the record
12 this is Nathan Baker. We would like to withdraw one of the
13 exhibits, and it's in the blue binders for the Council,
14 Exhibit 6.06c.

15 MR. McMAHAN: No objection on a cross-examination
16 exhibit. They can withdraw at liberty. They don't need my
17 approval.

18 MR. KAHN: But we want it.

19 MR. McMAHAN: You just want to make me feel good.

20 MR. SUTHERLAND: That was 6.06c?

21 MR. BAKER: Yes, sir.

22 JUDGE WALLIS: Very well. It appears that there's
23 no objection from any of the Council Members.

24 The next matter is starting time for tomorrow. In
25 light of the number of witnesses on the morning schedule are

1 we still good starting at 8:30 or would you like to back
2 that up to 8:00?

3 MR. KAHN: I prefer 8:30, Your Honor. I'll be
4 coming from Portland tomorrow morning and that's where some
5 of the other witnesses are.

6 JUDGE WALLIS: There appears to be a consensus.
7 Let's be in recess until 8:30 tomorrow morning.

8 MR. KAHN: Thank you, Your Honor.

9 * * * * *

10 (Whereupon, the hearing was adjourned at 5:39
11 p.m.)

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1 I N D E X

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3 Jason Spadaro

4 Recross by Mr. Aramburu 189

5 Recross by Mr. Kahn 192

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8 Cross by Mr. Aramburu 196

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25

1 E X H I B I T S

2	NO.	DESCRIPTION	ID	OF	AD	REJ
3	1.07c	BPA system impact study		169		
4	1.08c	WA Wind Speed at 50 meters		169		
5	1.09c	WA Wind Power at 50 meters		169		
6	1.10c	WA Wind Power at 50 mm (zoomed)		169		
7	1.11c	Map of 50 turbine towers		169		
8	1.14c	Davenport e-mail			218	
9	1.15c	Skamania County Ordinance 2010-10		169		
10	1.16c	DNR Comment		169		
11	2.00	Testimony of Katy Chaney		195	195	
12	2.01	Resume of Katy Chaney		195	195	
13	2.02	Cert of L.U. Consistency 2009-22		195	195	
14	2.03	Cert of L.U. Consistency 2009-54		195	195	
15	8.00	Testimony of Chris & Tom Watson		220	220	
16	8.01	Resume of Chris Watson		220	220	
17	8.02	Resume of Tom Watson		222	222	
18	8.03r	Rebuttal Testimony of Tom Watson		223	223	
19	8.04r	Map, Turb Vis from I-84		223	223	
20	8.05r	Map, Turb Vis from Columbia River		223	223	
21	8.06r	Map, Turb Vis from HCRH		223	223	
22	8.07r	Graph, Apparent turb height		223	223	
23	8.08r	Visual Simulations		223	223	
24	8.09r	50 mm focal length illustration		223	223	
25	8.10r	Cloud background comparison		223	223	

1 E X H I B I T S (Cont'd)

2	NO.	DESCRIPTION	ID	OF	AD	REJ
3	8.11c	BLM Manual H-8410-1		367	368	
4	8.12c	BLM Manual 8431		367	368	
5	8.13c	FHWA Vis Impact Assessment		367	368	
6	8.14c	Excerpt from Forest Service Handbook		367	368	
7	8.15c	CRGNSA Management Plan		367	368	
8	8.16c	The Visual Paper		280	281	
9	8.17c	HCRH Master Plan pg 40-49		280	281	
10	8.18c	HCRH mp 2016 reconnection projects		280	281	
11	8.19c	Friends of HCRH Letter		263	281	
12	8.20c	Excerpt List of OR State Parks		280	281	
13	9.00	Testimony of Dautis Pearson		286	286	
14	9.01	Resume of Dautis Pearson		286	286	
15	9.02r	Rebuttal of Dautis Pearson		287	287	
16	9.03r	FHWA manual, visual impact, etc.		287	287	
17	9.04r	Inventory Methodology USFS		287	287	
18	9.05r	CRG NSA guidelines, 6/30/87		287	287	
19	9.06r	DEIS photomontage and wireline		287	287	
20	21.00	Testimony of Dean Apostol		287	287	
21	21.01	Apostol Resume		370	370	
22	21.02	5/6/09 letter from FS to EFSEC		370	370	
23	21.03	8/23/01 letter from FS to EFSEC		370	370	
24	21.04	5/18/09 letter from NPS to EFSEC		370	370	
25	21.05	7/19/10 Letter from Interior Dept		370	370	

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NO.	DESCRIPTION	ID	OF	AD	REJ
21.06	Scenic Resource Inventories		370	370	
21.07	Historic Highway State Trail		370	370	

1 In re: Whistling Ridge Energy Project
2 Application No. 2009-01

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A F F I D A V I T

I, Shaun Linse, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on January 4, 2011, in Stevenson, Washington.

Shaun Linse, CCR 2029